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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x
3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 536 (PGG)

5 KALEIL ISAZA TUZMAN, et al.,

6 Defendants.

Trial

7 -----x

New York, N.Y.
December 22, 2017
9:10 a.m.

9 Before:

10 HON. PAUL G. GARDEPHE,

11 District Judge
-and a jury-

12 APPEARANCES

13 JOON H. KIM

Acting United States Attorney for
the Southern District of New York

14 A. DAMIAN WILLIAMS

15 ANDREA M. GRISWOLD

JOSHUA A. NAFTALIS

16 Assistant United States Attorneys

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18 AVI WEITZMAN

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Attorneys for Defendant Amanat

20 RANDALL W. JACKSON

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(Trial resumed)

THE COURT: Please be seated.

I received a letter, I guess last night, from Mr. Tuzman's counsel, objecting to the government's suggestion of, I guess, putting a computer into the jury room. As I previously indicated, I have no intention of sending any sort of computer into the jury room, I'm happy to hear anything anyone wants to say on the subject, but I'd previously indicated to the lawyers that I had significant concerns about sending computers into the jury room.

MS. GRISWOLD: We understood that, your Honor. I think that there is a small subset of documents that can't really be feasibly printed, such as the trading records for Mr. Maiden; there are thousands of pages, so we need some sort of plan. The government would propose that we have a computer that's wiped that has that subset of documents on it and available so that the jury, if they want to look at trading records, can do that, because we can't send, or we propose not to send thousands of pages of trading records back in paper format.

THE COURT: As I said, I'm not going to send any sort of computer equipment back into the jury room. I'm happy to include in the charge some statement that certain documents, such as trading records, are too voluminous to send into the jury room and if they want to see them or some portion of them,

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1 they can request that, but I'm not going to send --

2 MS. GRISWOLD: That makes sense, your Honor.

3 THE COURT: As you recall, in the charge I say, "All
4 of the documentary exhibits that have been received in evidence
5 will be sent into the jury room." What I had contemplated
6 adding, subject to what the lawyers thought, was, "You may also
7 request nondocumentary evidence, and that will be shown to you
8 here in the courtroom," and maybe an appropriate -- I'm open to
9 suggestions.

10 MS. GRISWOLD: From the government's perspective, I
11 think that makes sense, because there are a couple things that
12 fall into that category, such as the NASDAQ video clips or
13 perhaps Mr. Steward's testimony. I would request that that be
14 maintained in the charge and that an additional sentence be
15 added that certain records, such as trading records that are
16 voluminous, and spreadsheets, will not be sent back but will be
17 available to you if you request them and can be shown to you in
18 the courtroom.

19 THE COURT: Is there an index of materials that were
20 received in evidence?

21 MS. GRISWOLD: Yes, your Honor. We have that
22 prepared.

23 THE COURT: OK. Do the defense lawyers have any
24 objection to the language proposed by Ms. Griswold?

25 MR. JACKSON: No, your Honor.

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1 MR. WEITZMAN: No, your Honor.

2 MR. JACKSON: I would just note I don't think the
3 parties conferred on the indexes, so we'll need to discuss
4 whatever it is.

5 THE COURT: OK. I do want the documentary evidence to
6 be prepared such that it can be sent back into the jury room as
7 soon as deliberations begin, so I would like the lawyers to
8 consult on that and make sure everybody's comfortable with what
9 we're sending back into the jury room.

10 Ms. Griswold, could you give me that sentence again,
11 please.

12 MS. GRISWOLD: Yes, your Honor.

13 Certain exhibits that are too voluminous to be sent
14 back in paper format will be available.

15 THE COURT: OK. Just give me a moment.

16 Should I say too voluminous for copying? Should I say
17 that?

18 MS. GRISWOLD: For printing, I would suggest.

19 THE COURT: OK, for printing. And should I say "such
20 as trading records"?

21 MS. GRISWOLD: Such as trading records and Excel
22 spreadsheets, would be our request to cover the documents that
23 fall into that category. For example, there are Chips wire
24 transfer records that fall into this category.

25 THE COURT: All right. To be clear, I'm going to add

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1 on page 73, in the paragraph addressing their right to see
2 exhibits, I'll just read the whole paragraph:

3 "All the documentary exhibits that have been received
4 in evidence will be sent into the jury room. You may also
5 request nondocumentary evidence and that will be shown to you
6 here in the courtroom. Certain exhibits that are too
7 voluminous for printing, such as trading records and Excel
8 spreadsheets, will be made available to you here in the
9 courtroom upon your request. An index reflecting materials
10 received in evidence will be provided to you."

11 MS. GRISWOLD: That works for the government. Thank
12 you.

13 MR. WEITZMAN: Yes. That's agreeable.

14 THE COURT: Mr. Jackson.

15 MR. JACKSON: Yes. That's excellent, Judge.

16 THE COURT: OK. Have you talked amongst yourselves
17 about what you want to do with respect to the jurors that have
18 articulated issues with sitting next week?

19 MR. JACKSON: The defendants have discussed it, your
20 Honor. Our preference is I think for one, I think for all of
21 them, it only makes sense to, I think, release Mr. Morgan and
22 to make the other two jurors who had issues alternates, and
23 proceed with the jurors who can actually deliberate into next
24 week, because otherwise, we run the risk of any number of
25 problems, among them including the possibility of having to

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1 restart deliberations, perhaps even multiple times. We think
2 it makes sense to go with the jurors that are able to sit.

3 THE COURT: Just so I understand, you're proposing
4 that I excuse Mr. Morgan at the close of everything, at the
5 close of summations and jury instructions today; you're
6 suggesting I excuse him. Right?

7 MR. JACKSON: Yes, your Honor. I think based on what
8 your Honor explained to us was his proffer, it does not sound
9 like he's going to be in any position, I think it would be an
10 undue burden on him to have the possibility of returning while
11 he's addressing what we discussed. We think it makes sense to
12 release him and then appoint the other two jurors who have
13 issues as alternates.

14 THE COURT: One is already an alternate, so no issue
15 there.

16 MR. JACKSON: Right.

17 THE COURT: That is Ms. Mueller.

18 Just to be clear, you're suggesting that with
19 Mr. Sabogal I should tell him that he's subject to recall.

20 MR. JACKSON: Yes, your Honor.

21 THE COURT: OK. What does the government say?

22 MR. NAFTALIS: Your Honor, we largely agree, but in an
23 excess of caution, we would suggest not releasing Mr. Morgan.
24 Let him go back to work on the very off chance that we actually
25 need an alternate, I think it would be prudent to just have him

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1 available. I don't think anyone wants to impose on him. We
2 know he can't really sit anymore, it's gotten to be too much
3 for him, but it would be nice to just have an alternate if we
4 ever need one. But I think we all agree that the folks who are
5 available to start deliberating, we should just make them the
6 seated jury and make the others the alternates.

7 THE COURT: Does anyone object to my telling all three
8 jurors that they're subject to recall?

9 MR. JACKSON: Your Honor, we defer to the wisdom of
10 the Court. It just seems -- we defer the wisdom of the Court.
11 We've already stated our view.

12 THE COURT: As I told you yesterday, another thing you
13 should be thinking about is Mr. Morgan, as I told you, was, as
14 I understand it, the sole juror who was objecting to sitting
15 until five today, so you might want to factor that into your
16 calculations about whether you want me to excuse him or whether
17 you want me to tell him he's subject to recall.

18 MR. JACKSON: I think that's a major issue, your
19 Honor, and it's a continuing issue, because next week is going
20 to be a high-stress week, too, in terms of timing.

21 THE COURT: Right.

22 MR. JACKSON: I think it makes sense to excuse
23 Mr. Morgan.

24 MS. GRISWOLD: I think, your Honor, if that's the
25 case, the rest of the jurors could stay until five and he's the

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1 only one, we would agree. If that is the state of the facts,
2 then we agree.

3 THE COURT: Yes, that is the state of the facts.
4 Mr. Ruocco's repeatedly told me that. And by the way, I think
5 that's been true for some time. Just so you know, there was
6 great willingness on the part of the juror to stay longer, but
7 Mr. Morgan was the dissenter on that.

8 With the approval of the lawyers, I will excuse
9 Mr. Morgan at the close of the jury instructions, and I will
10 tell Mr. Sabogal and Ms. Mueller that they are subject to
11 recall and will be functioning as alternates and that they will
12 be subject to all the rules of conduct that I told them at the
13 start of the trial.

14 MR. WEITZMAN: Thank you, your Honor.

15 MR. JACKSON: Thank you, your Honor.

16 THE COURT: Mr. Weitzman, was there something else you
17 wanted to say?

18 MR. WEITZMAN: Yes. I wanted to raise two issues.

19 The first is one that I raised yesterday. I've gone
20 back to the transcript and we are requesting a curative
21 instruction on two statements that were made in the
22 government's summation. The first concerns Professor Ferrell's
23 testimony. At page 6876, the government stated as follows:

24 "Even the defendants' expert, the Harvard-MIT
25 professor, he spent a day testifying about how he did not

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1 believe Maiden had a big impact on price each day. Even he
2 testified that there were a number of days where Maiden did
3 impact the price."

4 Frankly, I think both statements are wrong. He did
5 not testify at all about whether Maiden had a big impact or
6 not, and he certainly did not testify that there were a number
7 of days where Maiden did impact the price. I think the
8 government crossed its own red line on this one.

9 THE COURT: Let's stick with that.

10 What's the government's position on that?

11 MR. WILLIAMS: Your Honor, they raised this after the
12 government's submission, and I think the Court and the
13 government both said that they're free to respond in their
14 defense summation to that point. They specifically declined to
15 do that and are now seeking an instruction. We certainly think
16 if there was a misstatement, they could have pointed it out to
17 the jury, and that's fair argument that they would be able to
18 make, but they didn't do that. For them to make that strategic
19 decision to not comment so now they can seek an instruction
20 from the Court, we think that that's not warranted.

21 THE COURT: Why should this be treated any differently
22 than other objections that have been made where I told the jury
23 that their recollection of the evidence controls? Why should
24 this be treated differently?

25 MR. WEITZMAN: Your Honor, I think that this is

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1 actually rather egregious for two reasons.

2 THE COURT: First of all, maybe I'm wrong, but I
3 thought he did concede or his charts indicate that there was an
4 effect on 12/31. Am I wrong about that?

5 MR. WEITZMAN: He conceded that there was a
6 statistically significant movement in the price of KITDigital's
7 stock. He specifically testified that he can't testify as to
8 the reasons for that statistically significant movement.
9 That's the point.

10 Part of our defense, your Honor, is given the absence
11 of any proof that Maiden actually moved the stock, and this is
12 the entire point about Professor Ferrell. Given the absence of
13 that evidence, there are fair inferences that can be drawn that
14 there was no agreement to manipulate the stock. This is
15 literally the only statement and only piece of evidence they
16 are now pointing to to suggest there was actual market
17 manipulation, and it's based on a misstatement of the record.

18 Now, when I raised it, the government said, We'd like
19 to look at the transcript, we're not sure what was said. And
20 we didn't have the benefit of the transcript either during our
21 summation, but I think that when it's such a critical piece to
22 our defense --

23 THE COURT: Why didn't you address it, then, in your
24 summation if it was so critical?

25 MR. WEITZMAN: I think we did address that Professor

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1 Ferrell said there was no statistical movement.

2 THE COURT: OK. Why isn't that adequate? The
3 government actually says you didn't, but I'll accept your
4 representation that Mr. McRae did. If Mr. McRae did address
5 it, again, I come back to my original question. What you're
6 saying basically is that the government misrepresented the
7 evidence. The parties have been trading allegations of that
8 sort throughout the summations.

9 I have an instruction to the jury I've already given,
10 I'm going to give it again in the charge, that it's their
11 recollection of the evidence that controls and to the extent
12 the lawyers have said something that's wrong about the
13 evidence, it's their recollection that controls, so I'm
14 struggling with why that is not adequate.

15 MR. WEITZMAN: I appreciate that, your Honor.

16 THE COURT: Because at bottom, what you're saying is
17 that the government misrepresented what the evidence was, and
18 as I said, the parties have been trading those accusations, but
19 ultimately, I told the jury when someone objected, It's your
20 recollection of the evidence that controls, not what the lawyer
21 says, and I'm going to repeat that in my charge, as you know.

22 MR. WEITZMAN: Yes.

23 THE COURT: The question is, why isn't that good
24 enough?

25 MR. WEITZMAN: I want to preserve my objection. I

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1 want to make the record clear. I think it's a bit different
2 when you're arguing, I think that instruction is a very
3 appropriate instruction. I also think the jury understands
4 that it's about the inferences drawn from the evidence. This
5 is just a misstatement, total factual misstatement, but I
6 understand your Honor's position. I will move on.

7 But I do want to make the record clear that in two
8 other instances, the government stated that my client received
9 money from Enable. I've gone back to the transcript, and the
10 government said, at page 6868:

11 "He went to Steve Maiden, he went to Steve Maiden,"
12 this is referring to Mr. Amanat, "to steal money from Maiden so
13 he could give it back to Isaza Tuzman."

14 That was an incorrect statement of the record, and
15 then at page --

16 THE COURT: Oh, because it went back to KIT? Is that
17 your point?

18 MR. WEITZMAN: Yes, it is, your Honor.

19 THE COURT: What's the government's position on that?

20 MR. WILLIAMS: Your Honor, this is obviously one of
21 those cases where he, as the CEO of the company that he's named
22 after himself, is negotiating directly on behalf of KITDigital
23 to get the money back, saying that Enable sent it back to him
24 is pretty much the same thing. The jury can certainly
25 understand that the money is for the corporate entity as

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1 opposed to him personally.

2 Again, if they thought this was such a critical point,
3 they could have pointed that out to the jury. In fact, I think
4 Mr. McRae said the corporate form matters, KITCapital versus
5 KITDigital versus Kaleil personally. We don't think this is an
6 issue.

7 THE COURT: Is this a matter you intend to touch on in
8 your rebuttal?

9 MR. WILLIAMS: Not that wire, your Honor.

10 THE COURT: OK.

11 MR. WEITZMAN: Just for the record, there's a second
12 reference, on page 6869, which says:

13 "So two days later Maiden wires the first million to
14 Enable, and what does Omar do with that money? The very same
15 day, and you saw these bank records, the majority of that money
16 that came into Enable from Maiden went out the door to Isaza
17 Tuzman."

18 That's just incorrect. I think the government has to
19 concede that. I'm not asking for anything further. If your
20 Honor were willing to give a curative instruction, I would
21 request it, but I understand your Honor's point.

22 There's a the second point, your Honor, which is the
23 issue of the government's summation on the whole and what it
24 may intend to do in its rebuttal. The law is clear that a
25 summation is where the government's supposed to marshal the

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1 evidence.

2 THE COURT: I want to say the jury is present so I
3 need you to please make this point as quickly as you can. I
4 asked the jury to be on time. They were on time. It's almost
5 9:40. I know you want to make a record, but please make it as
6 quickly as you can. OK?

7 MR. WEITZMAN: Yes, your Honor. 30 seconds.

8 A summation is where the government marshals its
9 evidence; it's not in rebuttal. The government in its
10 summation did not mention the following even once: Sezmi,
11 Peerset, WWB, Tomas Petru, Visual Connection, Morse Chen.

12 My strong suspicion is that the government held back
13 those allegations and those documents so that it can spring it
14 on rebuttal. I think if that happens, your Honor, the
15 defendants may be entitled to a surrebuttal, and I think
16 there's a lot of support.

17 We can proceed and see what they do on rebuttal, but I
18 wanted to put that out there.

19 THE COURT: Mr. Jackson, are you prepared to proceed?

20 MR. JACKSON: I am, your Honor.

21 (Jury present)

22 THE COURT: Please be seated.

23 Good morning, ladies and gentlemen. We will now hear
24 the rest of Mr. Jackson's closing on behalf of Mr. Amanat.

25 Mr. Jackson, please proceed.

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Summation - Mr. Jackson

1 MR. JACKSON: Thank you, your Honor.

2 Good morning again, ladies and gentlemen, and I want
3 to say thank you. I didn't get a chance yesterday to say thank
4 you, but I hope you know that all the parties deeply appreciate
5 your jury service. We know that this has been a very long
6 trial, and we deeply appreciate the sacrifice that you've all
7 made.

8 I want to start off by talking a little bit about the
9 concept of common sense, which is something that the government
10 has brought up. It's something that's been discussed in this
11 trial, and I'm going to try to move as quickly as possible
12 today in the very limited time I have through a lot of points
13 of evidence, so I apologize if I move too fast. I'm going to
14 try to address everything, but there's a lot. And the thing
15 that I want to ask you to do is, as you examine the evidence,
16 don't give up real common sense. And I submit to you the term
17 gets tossed around, but what it really means is stepping back,
18 looking at the big picture, using your own powers of deduction,
19 what you know about your own everyday lives, and asking
20 yourselves, does that make sense?

21 Now, in that context, the first thing I want to
22 address is the government's rebuttal case. You heard a few
23 witnesses testify in the rebuttal case having to do with some
24 allegations relating to four documents in this case. I'm going
25 to address them very quickly. That's not because we don't take

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Summation - Mr. Jackson

1 them seriously. We take those kind of allegations extremely
2 seriously. We have enormous respect for this jury, and it's
3 incredibly important that those are appropriately addressed,
4 but the reason I'm moving through them quickly is because it's
5 important for you to understand, you need to listen to the
6 judge's instructions closely. This is not evidence that Mr.
7 Amanat participated in any of the crimes, and it can't be
8 substituted as evidence that he participated in any of the
9 crimes charged. It's offered for a much more limited purpose,
10 but even for that limited purpose you can't accept it, and I
11 want to talk to you briefly about why. It's not proof.

12 One of the things that you heard early in the case was
13 from Mr. Maiden -- sorry, late in the case, when Mr. Maiden was
14 talking about some of the, we talked a little bit about this,
15 he was talking about some of the bluffing that was going on
16 between Mr. Isaza Tuzman, bluffing going on between Omar Amanat
17 and Mr. Maiden, and this is important, right, because what
18 Mr. Maiden talked about on the witness stand, the reason I want
19 you to keep this in mind, Mr. Maiden was emphasizing, when he
20 was recalled to recant his earlier testimony that he had
21 actually received all these documents, he acknowledged that
22 every component of what was in those documents that's important
23 was something that was actually discussed in real life,
24 including this bluffing that the government focused in on.

25 Another thing that's important, right, Special Agent

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Summation - Mr. Jackson

1 Amato, very good special agent, she talked to you about this.
2 She talked to you about the fact that on Mr. Maiden's computer,
3 which is the centerpiece of what the government is trying to
4 argue is evidence that there were some missing emails,
5 Mr. Maiden's computer had a multi-month gap. It had a gap that
6 stretched from the end of January into March, where there were
7 thousands of emails that the FBI presumed were missing, and
8 they had absolutely no explanation for it. And ladies and
9 gentlemen, I submit to you that when you actually hear the
10 charge and you understand precisely when the conspiracy is
11 alleged to start in this case, you're going to see that one of
12 the biggest coincidences, which no one can explain, is that
13 Mr. Maiden's computer is missing all of the emails right up
14 until the start of the alleged conspiracy period and scheme
15 period that relates to Counts One through Three. That's
16 bizarre and it's unexplained.

17 What else? Another part of the evidence in its
18 rebuttal case was the Yahoo stipulation that you saw that had
19 to do with the idea that there were some emails, that there was
20 a search warrant for them and they looked for these emails. If
21 you actually look at the stipulation -- and this was agreed
22 between the parties; it was a mutually stipulated agreement --
23 the stipulation makes clear that the Yahoo employee that
24 they're talking about here did not, was not a coder, didn't
25 understand how linked accounts were stored within Yahoo's

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Summation - Mr. Jackson

1 system, and what you know the evidence is, is that Mr. Amanat
2 had two different Yahoo addresses which were linked. It's
3 impossible for us to know, because the government didn't put on
4 any proof of it, and this Yahoo witness made clear that it's
5 impossible for us to know how that's stored within the Yahoo
6 system. What we do know is that when we logged on to it, when
7 we looked at it, there were thousands of emails in these linked
8 accounts.

9 You saw that when Ms. Rosen showed you some of the
10 accounts that showed you the raw data that was completely
11 turned over to the government. You also saw that here, in the
12 government's discovery, there were portions, the important
13 portions of certain of the chains that were at issue here, and
14 this is the one about recording. There is no question, there
15 is no question that Omar Amanat was telling Mr. Maiden it was
16 important for him to record the call, and he even said to him
17 after Mr. Maiden told him that he didn't know how to record a
18 call, Please wait. And then Mr. Maiden conceded that Omar
19 Amanat was upset and that he was not happy that Mr. Maiden had
20 gone forward with the call.

21 Well, this is the email that demonstrates that he was
22 upset. It fits in logically. It fits in with your common
23 sense. This is just the email that Mr. Amanat got about the
24 catchall mailbox, it's continued at 2017, which helps to
25 explain why there's any confusion on the part of the government

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Summation - Mr. Jackson

1 in terms of the search warrant. If you look at the actual
2 stipulation, you can see that it doesn't say what they claim
3 that it said.

4 Again, going back, this is Mr. Isaza Tuzman talking
5 about the fact that bluffing was a key part of what they were
6 doing at the time.

7 What else? Mr. Maiden suggested in his testimony that
8 he didn't believe that he would have been talking about sending
9 \$2 million, right, and some of the stuff with Jim Cohen in the
10 email. When you saw the agreement that came into evidence that
11 Mr. Maiden acknowledged that he had received, and it says,
12 "investor agrees to transfer to recipient a further \$2 million
13 in proceeds it receives from the current offering and if
14 investor fails to do so within 30 trading days, then Jim Cohen
15 or Stephen E. Maiden will do so in its instead."

16 Special Agent DeCapua, I just want to talk about
17 briefly. Again, we have no issues with Special Agent DeCapua
18 or his work as a special agent. He's a good special agent.
19 What he's not is an expert in computing. That was made
20 painfully obvious when you heard him testifying on the stand.
21 He acknowledged he had no degree in computer science. He
22 acknowledged that he had only had about two weeks of classroom
23 training on the issues he was talking about and testifying on.

24 When we tried to ask him about this degree of
25 approximation that he was talking about, the fact that with a

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Summation - Mr. Jackson

1 bunch of the records that we did not see, it was not the case
2 that the time stamp actually matched up with the purported sent
3 time. And we asked him, Where are those records? He said, I'm
4 not sure if I have them or not. He didn't introduce them; we
5 only saw a very limited subset of what he had done. And when
6 we asked him about this, Did you actually confirm that when you
7 looked at these records there was some sort of discrepancy, and
8 he said "I would eyeball it." Ladies and gentlemen, that's not
9 proof that you can accept in a case like this from a person
10 purporting to have a technical opinion that you're supposed to
11 rely on.

12 Do you remember when Mr. Naftalis cross-examined
13 Professor Ferrell? Mr. Naftalis was doing what he was supposed
14 to do, because when a person comes into the courtroom and
15 offers opinion testimony that's supposed to be based on their
16 knowledge in the field, they're supposed to be tested and
17 they're supposed to have sufficient information that they can
18 actually give you credible, reasoned opinions that are based on
19 science, based on actual knowledge.

20 Professor Ferrell was being cross-examined on the
21 details of his lifetime of work, numerous scholarly journals in
22 terms of what he was doing, and as a person who's been a
23 Harvard professor for a number of years. And with regard to
24 Special Agent DeCapua, we just didn't have that. I mean, we
25 asked him, Did you even ask anyone at Blackberry about whether

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Summation - Mr. Jackson

1 or not any aspects of what you're doing are accurate, and he
2 said he never talked to anyone at Blackberry. We don't know
3 what the Blackberry system does in terms of when we talked to
4 him about traffic, how the Blackberry system creates different
5 Message-IDs. We don't know that. What he conceded is that the
6 Message-ID program can be set up by any programmer to create
7 any number of random numbers to try to create a unique
8 identifier. Each one of the numbers that Special Agent DeCapua
9 was looking at could have been a hex number, it could have been
10 a base 32 number, it could have been a base 64. He just
11 doesn't know and he didn't have familiarity with the concepts
12 enough for you to rely on that testimony.

13 Special Agent DeCapua conceded:

14 "Q. You can't look at a UUID and determine definitively that
15 it came from an Apple Mail computer?"

16 And he said:

17 "A. No, you can't."

18 And we said:

19 "Q. Right, it's impossible because there are many different
20 ways a UUID can be created, right?"

21 "A. Yes.

22 "Q. Now, your testimony was that all UUIDs are in hexadecimal,
23 correct?"

24 He said:

25 "A. Correct.

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Summation - Mr. Jackson

1 Ladies and gentlemen, that was flat out wrong. OK?
2 When we asked him about it on the stand, he didn't really
3 understand UUIDs. He didn't know the history of UUIDs. He
4 wasn't familiar with who was responsible for the standards in
5 that area of computer science.

6 We asked him:

7 "Q. What's the source of your belief? Can you point us to any
8 authority that says all UUIDs are hexadecimal?"

9 He says:

10 "A. So, first, it's just through observation," and then he
11 mentioned the Wikipedia posts for UUIDs.

12 Ladies and gentlemen, that is not appropriate expert
13 testimony. It's not appropriate opinion testimony; you can't
14 rely on it. What you should rely on, right, and we asked him:
15 "Q. Didn't you come across numerous articles online that
16 indicate UUIDs can be created in base 32 and base 64, which
17 would mean that they could contain a V? By Agent DeCapua's own
18 testimony, he said he hadn't seen that.

19 Then, Ms. Rosen testified that she did a simple lookup
20 for these articles and there were numerous articles online
21 available that show base 32 and base 64 UUIDs, which Special
22 Agent DeCapua explained would contain a V, but he didn't know
23 about that, because he's not an expert in this area. He's a
24 good agent, but he's not an expert in this area.

25 What else? This was a portion of Mr. Maiden's

HcmWtuzl

Summation - Mr. Jackson

1 testimony on this issue, where he was calling into question
2 whether or not he would have received this email during the
3 time period. Again, look at the actual agreements Mr. Maiden
4 entered. OK? The actual agreements Mr. Maiden entered say
5 exactly that, that he was required to transfer funds in a way
6 that's talked about in the emails. Right? And then, this is,
7 I think, in terms of the commonsense analysis, and I'm only
8 making two more points about this, in terms of the commonsense
9 analysis, some of the most clear evidence on this, Steven is
10 acknowledging that there were real-life conversations about
11 precisely these points.

12 (Continued on next page)

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HCMTTUZ2

Summation - Mr. Jackson

1 MR. JACKSON: This was the email, it says: It's been
2 three months and Cohen still hasn't lived up his word to send
3 us two million. I don't know why you seem unable to cut your
4 losses on this thing. You heard him say it. This was during
5 the time period when Blue Earth Solutions was tanking, Omar
6 Amanat was in real life expressing his concerns about Jim Cohen
7 at that precise time in real life. Yes.

8 He was saying to you that he had deep concerns about
9 what was going on with Jim Cohen and Blue Earth Solutions in
10 real life. Answer: Yes.

11 Similarly, this one talked about the 3D effect, the
12 email where Mr. Amanat was saying disclose, disclose, disclose
13 to every investor everything in this case, everything we know
14 about the Enable liquidity issues and lock up restrictions.

15 When we asked Mr. Maiden: In it Mr. Amanat says to
16 you it's the 3D effect, no special effects, disclose, disclose,
17 disclose, right? That's what it reads, yes.

18 In fact, disclose, disclose, disclose is something
19 that Mr. Amanat said to you in real life, right?

20 And Mr. Maiden says: I think he did use those words.

21 Then this email: Every trader on Wall Street records
22 their phone calls. This is standard protocol. How do you not
23 have a basic trading turret? When we asked Mr. Maiden about
24 this, we asked Mr. Maiden about this, we said: Are you trying
25 to say that Mr. Amanat was never saying to you that he had

HCMTTUZ2

Summation - Mr. Jackson

1 frustration about you not recording it? And he said: No,
2 you're right, he did. I think he was frustrated that I didn't
3 record the call.

4 We said: By the way, he also mentioned to you in real
5 life that you should use what is called a trading turret,
6 right? And a trading turret is exactly what is referenced in
7 this email, correct? Right, right.

8 Why is this important? It makes no sense that someone
9 would go through all of the complex whatever would be necessary
10 to create fake emails only to replicate conversations that it's
11 uncontested were being had in real life. There is no component
12 of these that matters that Mr. Maiden didn't completely
13 acknowledge or hasn't acknowledged in his conversations with
14 the government was a real component of the conversations.
15 That's an attempt to distract you from the real evidence in
16 this case.

17 And so, ladies and gentlemen, let's do one more, this
18 is the one where it says in an email: Therefore, my sincere
19 advice to you, which you never listen to, is that he is
20 bluffing -- referring to Kaleil Isaza Tuzman -- that the Enable
21 issue has any impact on the company. He's just trying to
22 sucker us into wire funds and I think to deflect blame from
23 what I heard is an internal coup d'etat by management.

24 And when we asked Mr. Maiden: Do you recall that at
25 some point Mr. Amanat told you that he thought Kaleil was

HCMTTUZ2

Summation - Mr. Jackson

1 bluffing, right? At some point, yes, we all thought everybody
2 was bluffing each other.

3 That was actually a subject of discussion between you
4 Mr. Amanat in real life, right? Yes.

5 And Mr. Amanat repeated, you see it here where it
6 says: Mr. Amanat repeatedly encouraged you to take a more
7 aggressive posture with Kaleil, right? Yes, that's true.

8 You see where it says in the paragraph number one that
9 we have a valid binding settlement agreement. This is another
10 one of the emails. Do you see it? I do.

11 In real life Mr. Amanat expressed to you that he
12 thought there was a valid binding settlement agreement worth 19
13 or 20 million from Mr. Maiden. Answer: He expressed that in
14 real life.

15 And in real life, he told you: Heck, the sale fee
16 alone is worth 20 million, right? Answer: He did.

17 Mr. Maiden is acknowledging every component that is
18 important in these emails is an undisputed subject of
19 conversation between him and Mr. Amanat in real life. It makes
20 no sense that someone would go to the trouble of trying to hack
21 Yahoo and create fake emails to replicate what is undisputed.

22 What about this part: We have a valid binding
23 settlement agreement. Mr. Amanat first quarter telling you
24 that he still thought the original settlement agreement was
25 valid. In the first quarter, yes, that's true.

HCMTTUZ2

Summation - Mr. Jackson

1 And he was telling you he thought the sale fee alone
2 was 20 million in real life, right? Yes, I think that's right.

3 This is another one. This is the sitting on a
4 mountain of cash. We're going through every component of these
5 emails. This was something that was actually -- that you and
6 Mr. Amanat discussed, right? Right.

7 Okay. And in fact, Mr. Amanat expressed to you that
8 he believed the company was worth 500 to 750 million. And he's
9 like: Right.

10 Again, the coincidence in this case -- the government
11 will try to say what a coincidence, there's no V. The
12 coincidence is that there are -- the government is building
13 their rebuttal case on Mr. Madden's computer. It's missing at
14 least thousands of emails, and there's no explanation, no
15 explanation from Mr. Maiden, no explanation from the FBI. The
16 FBI testified that they didn't even do a forensic examination
17 on Mr. Maiden's computer to try to determine the reason for
18 that. Why? Because that is called stepping away from the
19 pursuit of truth and focusing on trying to secure a conviction.
20 That's not appropriate. You should reject that. That's all I
21 have to say about that.

22 Now I talked to you yesterday about some of the
23 gambles the prosecution took. I'm going to move through these
24 quickly, but I just want to point out, it's really one gamble,
25 and it's the gamble that you are going to put aside your common

HCMTTUZ2

Summation - Mr. Jackson

1 sense and not consider the evidence and the judge's
2 instructions as it applies to the evidence in terms of whether
3 or not the government has actually proven their case beyond a
4 reasonable doubt.

5 So I just want to run through -- it's the same
6 concepts, but I want to run through just in terms of what they
7 flat are out, they are explicit reasonable doubts.

8 The second one is the government's only substantive
9 witness against Mr. Amanat is a proven liar. That alone is
10 enough for you to find Omar Amanat not guilty.

11 Now we have already talked about Mr. Maiden a lot.
12 I'm not going to talk about him too much today because you
13 heard his testimony. You know that the man can't be relied
14 upon. But there are a few points, if you bear with me, I have
15 to get through in terms of Mr. Maiden.

16 Again, Mr. Maiden acknowledged that before he ever met
17 Omar Amanat, ever met Kaleil Isaza Tuzman, he was engaged in
18 serious criminal activity. He was independently engaged in the
19 Blue Earth Solutions stock manipulation scheme. So this one
20 was fascinating, because we asked him about I particular email
21 that he sent to one of his earlier co-conspirators, a man who
22 he knew as the ice man.

23 And we showed him that email during his testimony, and
24 he is using code language in his conversation with the ice man
25 where he says please stop leaning on BESN, Blue Earth

HCMTTUZ2

Summation - Mr. Jackson

1 Solutions, let it breathe. This wasn't something that he had
2 discussed extensively with the government, but when we asked
3 him about this, we said this was the period you told
4 Ms. Griswold you were attempting to manipulate Blue Earth stock
5 right and you're telling the ice man to let it breathe.

6 And there were so many inconsistencies with this.
7 When we asked him about it initially we said: So you had a
8 communication with the ice man where you're telling him you're
9 coordinating with him about manipulating the stock of Blue
10 Earth Solutions. First he said: I don't recall it.

11 Then after I showed it to him, says: Were you having
12 conversations with the ice man about the manipulation of Blue
13 Earth stock? His answer: I would say yes.

14 This was a portion of Mr. Maiden's testimony where we
15 asked him: When you discussed with the government your first
16 meeting in June 2008, you were talking about a phone call.
17 Yeah.

18 And this was an amazing point in the testimony because
19 I think you guys remember this is was Mr. Maiden was recounting
20 his first conversation supposedly with Mr. Amanat, and he was
21 claiming that Mr. Amanat was telling him about the Twilight
22 money that he was making, and then when we asked him, we said:
23 Sir, it's a fact, isn't it, that in June 2008 the trial
24 Twilight films hadn't even come out. And we showed him
25 something that refreshed his recollection, and he acknowledged:

HCMTTUZ2

Summation - Mr. Jackson

1 That's right, they didn't come out until November 2008.

2 The man is spinning a tale in order to fit in with the
3 government narrative that he believes the government wants you
4 to hear.

5 This is probably one of the most important points.
6 You will recall that throughout the testimony with Mr. Maiden
7 he was fighting on the concept of whether or not he believed
8 that a settlement was possible. And you may have been
9 wondering -- you probably figured it out by now because you
10 heard the whole case, but may have been wondering at that time
11 why is Mr. Maiden fighting so hard to say that he didn't
12 believe a settlement was possible? What is this issue?

13 Well, this goes back to what I was talking about
14 yesterday. Mr. Maiden knows that if he believed that the
15 settlement was valid, that means there was no conspiracy. Why?
16 Because if Mr. Maiden believed that they could have gotten a
17 value out of the settlement, if he really believed that you
18 could try to get the value out of the settlement, then the
19 value of his fund was actually under marked at the time.

20 And let me just unpack that. What that means is he
21 was valuing his investors' investments at less than the actual
22 amount that they were worth at that time based on his belief.
23 And remember, the government has to establish that the
24 conspirators had a meeting of the minds with regard to the
25 alleged fraud.

HCMTTUZ2

Summation - Mr. Jackson

1 And so at this point, Mr. Maiden, when we asked him,
2 "You actually believed there was an opportunity for Maiden
3 Capital to collect on that original value you thought you were
4 getting out of the settlement," his answer was, "I don't know
5 what I believed." I don't know what I believed. After he had
6 been prepping on this issue numerous times with the government.

7 And we asked him -- we showed him a communication with
8 his lawyer that we got access to, and in the communication with
9 his lawyer his statement couldn't be more clear. He says: My
10 thought was always and in persisting that KIT Digital was a
11 good company and would be sold for a lot, and the value of the
12 settlement, particularly including the sale fee of 2.5 percent,
13 which I never marked in my fund but always knew, when honored,
14 meant my fund was marked at a significant discount, was worth
15 more than the fund was marked. And upon liquidation, the fund
16 would be liquid and profitable for all investors.

17 Why is that important? This is a completely different
18 statement of what he believed at the time versus what he's
19 claiming he didn't know, he wasn't sure about what the
20 settlement was.

21 When we went back after that he said: So at one
22 point, you believed the settlement was valid? And he said: I
23 did.

24 Again, we continued to ask him about. He continued
25 fighting on his belief that the 2.5 percent sale fee alone was

HCMTTUZ2

Summation - Mr. Jackson

1 worth more than your entire fund. He's like: It could have
2 been at certain prices.

3 But this is a communication between him, Mr. Maiden,
4 and Mr. Isaza Tuzman and Kamal El Tayara in 2012 where
5 Mr. Maiden said: My lawyer has been studying the first
6 settlement and strongly believes, as I do, that it is
7 enforceable.

8 Now why is Mr. Maiden doing this? It's because of
9 something that the government didn't talk about a lot during
10 the course of this case, it came up in cross-examination. This
11 is the cooperation agreement between Maiden and the government.
12 And the important key point that's not addressed, it says:
13 Upon a determination that the defendant has rendered
14 substantial assistance.

15 What that means is Mr. Maiden knows he has to secure
16 something against someone. He can't -- it's not enough that he
17 just tell his story, it has to implicate another person. And
18 that's what he's attempting to do here, he's attempting to
19 demonstrate that he can provide substantial assistance. And
20 it's a term that miraculously wasn't even explored during
21 Mr. Maiden's direct examination, even though it is the heart of
22 his cooperation agreement with the government.

23 Again, when we first asked Mr. Maiden about Mr. Amanat
24 specifically telling him that he wanted him to record his phone
25 calls with the investors, his claim was that he didn't remember

HCMTTUZ2

Summation - Mr. Jackson

1 it. Then you saw -- this is the uncontested authentic email
2 that came from Mr. Maiden's computer where Mr. Amanat said: Do
3 the call on a recorded line.

4 Now I'm not going to talk a lot about Mr. Maiden's
5 cocaine use because, frankly, you heard it. The point that I
6 want to make about his slitch use is not that Mr. Maiden is a
7 drug addict. He is a drug addict, it's pretty clear, but
8 that's not really the point.

9 The point is he told what the government should have
10 realized were multiple clear lies about him. When a witness
11 telling you about something as obvious as that, multiple clear
12 lies about it, it's a real problem that's not actually
13 addressed by the government.

14 These are the notes of the meeting -- this is a
15 stipulation between the parties. Government agrees that in the
16 2014 meeting that Mr. Maiden had with the government, the
17 report indicated that Maiden stated Maiden said that about ten
18 years ago his drug use stopped. This is his version one of his
19 drug use. So he's saying no drug use after 2004.

20 Then after this issue arose and he had some more
21 discussions with the prosecutors just before trial, he said:
22 It's been asked several times and brought up consistently, I
23 would say it's been generally consistent.

24 I said: Well, isn't it a fact, sir, when you
25 originally were asked about the two meetings you told the

HCMTTUZ2

Summation - Mr. Jackson

1 prosecutors that you stopped using cocaine about ten years
2 before the conversation? And he said: Yeah, I recall saying
3 that I had basically stopped ten years before.

4 Not that you basically stopped, you told them that you
5 had stopped. He said: No, I recall saying that I basically
6 stopped.

7 Ladies and gentlemen, I submit to your own common
8 sense, do you really believe that federal agents interviewing a
9 cooperating witness would hear him say I basically stopped
10 using cocaine and they would just write down that he said that
11 he had stopped? That doesn't make any sense.

12 Then we got to the third version of this. What you
13 specifically told them after that was raised again was that
14 what you specifically told them was that it was no more than
15 two times a year in the last ten years, correct? Right.

16 But that was a lie, right? No, no.

17 Right, you're always -- then we broke out the slitch
18 text that he didn't know that we had, he didn't know that you
19 identified that in the text messages. And we started going
20 through it, and it was painfully obvious that this two times a
21 year in the last ten years thing, which was the version three
22 of his cocaine use, was just a lie.

23 There were all these communications involving whiff,
24 slitch, splash. There was a communication where someone on the
25 other side was saying white is simply white, and he's like the

HCMTTUZ2

Summation - Mr. Jackson

1 last seven minutes may require slitch. And he said: I don't
2 recall that message.

3 Having looked you through that, does it refresh your
4 recollection? He said: I believe I likely did have this text
5 message on that date, yes.

6 There were so many of them: Slitch was always the go
7 to. Only thing on my mind is whiff. Not even my kids compare
8 to a tight slitch buzz.

9 Again, the only reason that we're pointing this out to
10 you is because it's so blatantly obvious that Mr. Maiden just
11 told an enormous lie about this. No one jokes -- your common
12 sense tells you no one jokes, who is an actual cocaine user,
13 that much constantly about using cocaine when they actually do
14 use cocaine.

15 In fact, this one was one where he gave on two
16 separate days explicitly conflicting testimony. We said: In
17 the long ago past you did get cocaine from Mr. Yavelberg,
18 right? He said: Yes.

19 Then after a few days to think about the fact that he
20 didn't want to implicate Mr. Yavelberg, he said -- the question
21 I'm asking you is, yes or no, you sometimes got cocaine from
22 Mr. Yavelberg. Answer: No.

23 What else? You heard about this phone call that Mr. Maiden
24 claims he said all these things to Mr. Amanat. These are the
25 actual -- this is the actual language from the notes that were

HCMTTUZ2

Summation - Mr. Jackson

1 taken, the report that was taken by the federal agents involved
2 for the March 9 phone call. And he says Maiden stated it was
3 the morning after the call about Enable being defunct that he
4 first lied to his investors. Maiden said that an investor
5 asked how the month was going, and Maiden said it was fine.
6 Maiden advised it was after this investor phone call that
7 Maiden called Omar and said they had to fix the situation, and
8 that is when they tried to negotiate a settlement. Maiden said
9 that this added to the stress of the entire situation.

10 Now in this, this is a completely different description of
11 what happened in that original phone call than what Mr. Maiden
12 was trying to sell you on the witness stand. This is a phone
13 call that anyone could have. Maiden advised that after this he
14 called Omar and said they needed to fix the situation. That's
15 not a conversation that gives Mr. Amanat any sort of criminal
16 connection to Mr. Maiden.

17 We talked about the fact Maiden defrauded Mr. Amanat. He
18 has to be required to be punished for that.

19 Ladies and gentlemen, you heard the testimony, you saw
20 it. Mr. Maiden is a liar.

21 What else? The central prosecution arguments do not make
22 sense. And I want to emphasize, they have only focused on a
23 handful of documents in this case. Those documents do not
24 indicate that Mr. Amanat was a participant in any of the crimes
25 that we're talking about in this case. I want to talk about

HCMTTUZ2

Summation - Mr. Jackson

1 these, but when you look at that, the fact that their arguments
2 about these documents don't make sense is enough for you to
3 find Mr. Amanat not guilty.

4 What's one of the first ones they talk about? It's this
5 email, Government Exhibit 2908, where Mr. Amanat says to his
6 brother: Hey, Iffy, I also want to delete all my emails from
7 the Yahoo site but download them onto my laptop. How can I do
8 this? And Irfan Amanat says: Set up your Outlook to pull all
9 your email and delete it. If you need help, I could walk you
10 through it. And Mr. Amanat said: I'm concerned about them
11 subpoenaing Yahoo at some point.

12 This is important, because this email underscores how far
13 off from the actual proof of an actual conspiracy starting in
14 March 2009 we are in this case. Mr. Amanat -- this is months
15 before -- this is almost a year before the alleged time of the
16 supposed conspiracy. You heard that he had had other
17 businesses in the past, you know that there are civil
18 subpoenas, all he says here is that he wants to take his emails
19 off of Yahoo because he doesn't want people to have access to
20 them necessarily. That's not illegal. A lot of people delete
21 their email accounts.

22 What about this one? I had a call with Kaleil, we need to
23 discuss this. This is the call -- this is the document that
24 Ms. Griswold put up numerous times during the course of her
25 summation. I think it came up three or four times. And it's

HCMTTUZ2

Summation - Mr. Jackson

1 the document where Mr. Amanat is talking about the fact that
2 after a call with Kaleil there's all this concern in December
3 of 2008 about what is going on with Enable.

4 First of all, again, this document is not proof of any
5 of the actual charges here, it's background. But what's
6 important here is there's a lot that's left out. Look at
7 what -- these are actual communications between Mr. Amanat and
8 his brother.

9 Look at what Mr. Amanat says. He said you described
10 him -- describing the loss occurred do not jive with the
11 statements doc he saw from you and Mahmood. Sees no evidence
12 of big gains in the GTL -- at GTL in the Enable account. As I
13 suspected, he's perplexed how Enable only had a few hundred
14 thousand with GTL that do not show a major gain. Doesn't know
15 anything about Riverbank or other accounts. Seems he doesn't
16 understand your attempts to explain this.

17 Mr. Amanat isn't saying to his brother: We have been
18 caught, we have no trading. He's saying: You need to explain
19 what was going on in the trading better. What he's saying is
20 there's the GTL account where they had some gains -- and this
21 is the account that you will recall they freely explained to
22 both Mr. Isaza Tuzman and to Mr. Maiden, for whatever reason at
23 the end of 2008, that broker got locked up. They couldn't --

24 MR. WILLIAMS: Objection, your Honor.

25 THE COURT: Sustained.

HCMTTUZ2

Summation - Mr. Jackson

1 MR. JACKSON: So you see here -- and we'll go to an
2 email that addresses that, but it says he spoke with Mr. Maiden
3 where they apparently discussed difficulties getting money out
4 of Enable. Maiden tried to reach me and is asking for his two
5 million back. In a world where everyone is suspicious, this is
6 a major problem and red flag for me. As you know, I don't have
7 the ability to pay it -- repay it. I only made the loan
8 because Mahmood was promising to repay in a few weeks. Any
9 monies out from Mahmood need to first come to pay this down.

10 So in that, you see Mr. Amanat is saying that if they
11 get any money out of the broker, it needs to come to pay down
12 whatever debts they have.

13 And he says this is a major disaster. If Maiden
14 suspects fraud of some sort and notifies the authorities, I'm
15 cooked. That, ladies and gentlemen, I submit to you on the
16 surface sounds problematic, but it's a completely logical
17 statement, because what Mr. Amanat is saying is that we have a
18 real problem, and we can't get funds out of this broker. If
19 someone thinks that that's fraud, I'm going to be dealing with
20 a real problem.

21 And ladies and gentlemen, it's exactly what we talked
22 to you about in opening statement. When you are accused of
23 fraud, even if you didn't do it, it's a real problem, you're
24 going to be dealing with serious problems.

25 And what does Irfan Amanat respond to his brother?

HCMTTUZ2

Summation - Mr. Jackson

1 This isn't posturing. He doesn't say that there is no -- that
2 there's nothing behind this. He says okay, he doesn't know how
3 to read the statements, which is creating the problem when I
4 show it to him, and he says regarding Maiden discussed Mahmood
5 can't deliver the two million.

6 MR. WILLIAMS: Your Honor, we object and ask for an
7 instruction on this point on this email.

8 THE COURT: He's just reading the email. I will hear
9 you after. I will hear your point after.

10 MR. WILLIAMS: Thank you, your Honor.

11 THE COURT: At this point he just read the email. The
12 email is in evidence. He can read the email.

13 MR. JACKSON: Thank you, your Honor.

14 Now these are some other -- this is another one of the
15 emails that the prosecution focused in on. And I just want to
16 focus on this one briefly, because this is a discussion in
17 February 2009. Again, more background before the start of the
18 Counts One through Three supposed schemes.

19 But what he says is -- what's important here is look
20 at what Mr. Amanat says in February 2009. He says -- after
21 Irfan Amanat says -- after Maiden sends this message and Irfan
22 says can we do anything, he said: Yeah, send him back 500
23 ASAP. Oh, I forgot, we don't have it, with eight exclamation
24 points.

25 Why is that important? These are the communications

HCMTTUZ2

Summation - Mr. Jackson

1 in real-time between my client and his brother. Does that
2 sound to you like -- what does that read to you as? Use your
3 own common sense. Mr. Amanat is expressing frustration with
4 his brother for failing in terms of trading in what the
5 situation has created for him. That came through in a bunch of
6 the emails that are discussed here. And there's real concern
7 about it, but he's not discussing any sort of fraudulent
8 intent, he's talking about the fact that because of the
9 problems with the trading, they're not able to give the money
10 back.

11 And it's actually explicitly discussed in another one
12 of the communications that the government offered in evidence.
13 This is a communication where Mr. Amanat says -- and it's the
14 third sentence in April 20, 2009 email: The realty is we lost
15 a public company's cash through poor risk management, so we are
16 really in no position to be anything but humble and apologetic.

17 This is a communication between Mr. Amanat and his
18 brother in 2009 where he is acknowledging that it was through
19 poor risk management, poor -- a poor job in terms of the way
20 that they managed the GTL broker. And what Irfan Amanat
21 responds is please, again, before we take more blame, remember
22 we did the due diligence on GTL, their auditors said it had a
23 strong balance sheet. We had good risk management in trading
24 but poor risk management in trusting auditors. How ironic.

25 This isn't posturing. This is just two communications

HCMTTUZ2

Summation - Mr. Jackson

1 between the brothers. And they're not talking about fraud,
2 they're talking about the fact that they tried and they failed.
3 They tried to execute good trading in terms of GTL and they
4 just failed.

5 What else? There's a message that Ms. Griswold put up
6 several times during her summation, and it's this message --
7 it's everything that starts after the red part of this message.
8 She started off with trustee is appointed, he will quickly
9 realize all money was lost in KIT Digital and everyone here
10 will be sued.

11 What is being left out? The first part of the text
12 message was left out each time Ms. Griswold cited it. He said:
13 Be aggressive today. Say it doesn't matter who did what.
14 Paint a stark nightmare scenario.

15 Why is that important? Because when we asked
16 Mr. Maiden about it, we said Mr. Maiden -- sorry, they asked
17 Mr. Maiden who did you understand Mr. Amanat to be telling you
18 to be aggressive towards, towards Kaleil Isaza Tuzman.

19 And this goes back to what we talked about earlier,
20 there was a mutual interest in the parties bluffing one another
21 in these negotiations. This was not an acknowledgment that
22 there was a crime, that there was actually a crime, it was
23 aggressive deal making. This was an aggressive attempt to try
24 to push the situation in terms of the stakes there.

25 And this is something that you saw even in Mr. Isaza

HCMTTUZ2

Summation - Mr. Jackson

1 Tuzman's communications. He talked about, in another one in
2 2011 when he was communicating with Robin Smyth, you have to be
3 able to believe the bluff to carry it out.

4 This is how aggressive negotiations and business
5 discussions sometimes go by. And frankly, ladies and
6 gentlemen, that's what this was. This was a series business
7 dispute, but there's no evidence of an actual criminal
8 conspiracy.

9 What else? Fourth reasonable doubt. Omar Amanat
10 cannot be guilty of defrauding people whom he communicated no
11 fraudulent information to directly or indirectly.

12 This is perhaps the most important point. Steve
13 Maiden, when asked about early 2008 said hadn't met Mr. Amanat,
14 he hadn't met Mr. Tuzman, and you were already hemorrhaging
15 money from your fund, correct? He said: I was down, yes.

16 Said one of the additional things that you said is you
17 were describing your own trading as impressively bad trading.
18 Answer: Yeah.

19 And you remember when he was talking about his book he
20 was flaming money into the fire. This is going on long before
21 any of his dealings with Omar Amanat. The man had basically
22 destroyed his own fund.

23 And we asked him explicitly: You were already engaged
24 in massive gambling with your client's money, correct?

25 Yes, I was.

HCMTTUZ2

Summation - Mr. Jackson

1 Now again, this is from Mr. Maiden's testimony, Omar
2 and Irfan openly disclosed to Maiden that because of the GTL
3 problem, the Enable cash was frozen. Mr. Maiden says they told
4 him it was unable to be accessed, there was a market, you know,
5 the substance of it was that, as I testified yesterday, a
6 broker or bank that Enable apparently was doing business with
7 had frozen their assets and gone out of business and I couldn't
8 get access to any of my Maiden capital funds.

9 So in terms of what they were supposed to do, they
10 communicated to Maiden what the situation was. And this is so
11 important, because they're not charged --

12 MR. WILLIAMS: Objection, your Honor.

13 THE COURT: I'm going to sustain the objection.

14 MR. JACKSON: Okay, Judge I'm moving on.

15 THE COURT: Ladies and gentlemen, the reason why I'm
16 sustaining the objection is the evidence that Mr. Jackson has
17 referred to is offered on state of mind, you may recall, state
18 of mind of Maiden. It wasn't offered for its truth. So it's
19 important that you understand the purpose or are reminded of
20 the purpose of what that evidence was admitted for. It was
21 admitted to the extent it casts light on Mr. Maiden's state of
22 mind. It wasn't offered for the truth.

23 Go ahead, Mr. Jackson.

24 MR. JACKSON: Completely agreed. And that's what you
25 should focus on, Mr. Maiden's state of mind. You should also

HCMTTUZ2

Summation - Mr. Jackson

1 focus on what Mr. Maiden said were the actual communications
2 between the alleged co-conspirators at the time and what the
3 evidence is of that.

4 What else? The Enable statements that the government
5 alleges were the heart of the conspiracy here, there were these
6 statements that Irfan Amanat made, they didn't actually go --
7 first of all, Omar didn't send the statements to Maiden, he got
8 them from Irfan Amanat, who Mr. Maiden testified he understood
9 he was the person doing the trading, et cetera.

10 Again, Mr. Maiden said they told you they had a
11 problem with the company called GTL, right, we asked him,
12 right, GTL was one of the brokers, you understood?

13 I heard the name, yeah.

14 And they expressed to you they were illiquid because
15 of the problem that he had with GTL, right? Right.

16 And he told you that GTL got locked up because of
17 whatever problems they were having with the liquidity they had
18 was locked up, right? Right.

19 Now this is critically important to this point. We
20 asked Mr. Maiden one of the things that you looked at during
21 your direct examination when you looked at these statements,
22 these Irfan Amanat statements, there was a part that talked
23 about the guaranteed return. Do you remember that?

24 And his answer was: Yes.

25 And that was on each one of those statements, right,

HCMTTUZ2

Summation - Mr. Jackson

1 guaranteed return, right?

2 Right.

3 And the reason that was there is because you had
4 entered into an agreement where you got a guaranteed return,
5 correct?

6 And Mr. Maiden's answer was: I believe that's right.

7 Why is that important? Because you saw the agreement.
8 The money that was at Enable from Maiden Capital, Mr. Maiden
9 acknowledged that by the time period that this alleged fraud
10 begins to occur, the time period of this alleged conspiracy,
11 Mr. Maiden entered into an agreement to convert his investment
12 at Enable into a promissory note. This is the signed
13 agreement.

14 We asked him: Sir, yes or no, you had converted what
15 was going on in Enable, your investment there, into a situation
16 where you got a guaranteed return?

17 Answer: Yes.

18 What you understood is that where you converted that
19 into a guaranteed return, essentially a promissory note had
20 been created, correct?

21 And Mr. Maiden agreed.

22 Why is that important? Because at the point that a
23 promissory note was created, this was an acknowledgment between
24 them that they were converting it to debt. This was no longer
25 a trading account, it was a conversion into debt where they

HCMTTUZ2

Summation - Mr. Jackson

1 were promising them that what they could do, they would give
2 him the money they could, they owed him this debt. And they
3 openly stated it.

4 We asked Robin Smyth: Could you tell us what a
5 promissory note is? He's a person who is a Certified Public
6 Accountant. He said a promissory note is a commitment to pay
7 money on certain times.

8 A promissory note is a type of debt, right?

9 Yes, it acknowledges an amount due.

10 And a promissory note doesn't have to be secured by
11 anything, does it?

12 Answer: Correct.

13 Because they didn't have the cash, as Mr. Maiden
14 explained, they converted it to a promissory note. It was a
15 promise that they owed a particular debt.

16 And when we talked with Mr. Maiden about it, we asked
17 him: Fact of the matter is a hedge fund can own securities,
18 right?

19 Right.

20 It can also own real estate, right?

21 It can also own debt, right?

22 All three of those things can be distributed in kind
23 if you want to, right? Right.

24 There's a way to do it, right?

25 There is.

HCMTTUZ2

Summation - Mr. Jackson

1 So the debt interest that they had is something that
2 you saw Mr. Maiden freely enter into. And when they were
3 giving him statements after that point, all that the statements
4 had to reflect was what the accumulated interest was on the
5 promissory note. That's all it was.

6 If you look at it, it says -- it talks about the
7 guaranteed return, right, and when you looked at the
8 statements -- I said I want to highlight the top, current one
9 month Libor plus 30 basis points. Do you see that?

10 Yes.

11 Next to that it says guaranteed return.

12 Right.

13 If anyone looked at the supposedly fictitious Enable
14 statements, they would have seen they're reflecting exactly
15 what is supposed to be reflected when you have a promissory
16 note and when you have a debt interest that's accumulating
17 interest. It's not fictional, it's just a debt that they're
18 acknowledging.

19 What else? This was -- we asked Mr. Maiden: Now as I
20 think you told Ms. Griswold, nothing in the statement that
21 actually went to the investor specified the amount in Enable,
22 right?

23 Answer: Right.

24 So as far as you know, the investors had no idea what
25 the actual -- how you were actually -- how you were evaluating

HCMTTUZ2

Summation - Mr. Jackson

1 the Enable investment, correct?

2 That's true.

3 So Mr. Amanat is being charged with defrauding the
4 Maiden Capital investors even though they had no idea about
5 what his negotiations were with Mr. -- about what Enable's
6 negotiations were with Mr. Maiden, and they had no -- the
7 Maiden Capital investors had no exposure, no suggestion in the
8 communications that Mr. Maiden gave the investors that that
9 number somehow reflected Enable. It wasn't even part of the
10 discussion.

11 The Court asked the question very explicitly: Before
12 we go further, the statements that were sent to your investors,
13 did they show a balance, an Enable balance, those statements?

14 And Mr. Maiden said: No, they did not. They had some
15 dollar amount, which was the sum of all the stocks and all the
16 other assets I communicated, but it wasn't broken out like
17 that.

18 And the Court said: So no Maiden Capital investor
19 received an account statement showing that Maiden Capital had
20 an Enable balance of 2.5 million.

21 The witness: That's right. I didn't communicate to
22 them that I had made any investment in Enable.

23 It is impossible for Mr. Amanat to be guilty of
24 defrauding the Maiden Capital investors based on Enable
25 statements when they had no information about Enable. There

HCMTTUZ2

Summation - Mr. Jackson

1 was nothing to be omitted from a discussion because the
2 discussion never happened.

3 What else do we know? In the communications that
4 Mr. Maiden was having with SS&C, he's telling them exactly what
5 the Enable balance is, and he also is disclosing to them that
6 he is setting up a loan on his illiquid KIT Media position in
7 order to meet redemptions.

8 So he was describing to SS&C, his fund manager,
9 exactly what was going on in terms of Mr. Amanat, that there
10 was a balance that they had there, which was a debt interest,
11 and it was being communicated by SS&C. Mr. Amanat had no
12 involvement in the SS&C process, he had no insight into all the
13 other ways that Mr. Maiden was valuing its fund, he had no
14 communication with the investors that was fraudulent in any
15 way.

16 This is fascinating. This is a part where we saw a
17 communication from the investor Mr. Ellington to Steve Maiden
18 where he's talking about wanting a redemption. And you heard
19 there was a conversation between -- a phone call between Omar
20 Amanat, Jesse Ellington and Steve Maiden. And after the phone
21 call, Mr. Maiden sends Omar Amanat a text message where he
22 says -- we asked him about this: Then you're talking about
23 this phone call you just had with Jess Ellington, the investor,
24 right?

25 Right.

HCMTTUZ2

Summation - Mr. Jackson

1 Still can't believe you told Jesse you are first
2 priority lender. He is probably freaking out, right?

3 Answer: Right.

4 And what you're saying is you still can't believe that
5 Omar Amanat told the investor the truth, right?

6 The truth about that.

7 The only thing that happened on that phone call was
8 that Omar Amanat said I'm loaning Maiden money in order to pay
9 redemptions. That was the only conversation of any substance
10 that he ever had with an investor, and Mr. Maiden acknowledged
11 that was the truth, and he is sending Omar an email saying I
12 can't believe you told him the truth.

13 What else? Mr. Ellington didn't even remember what
14 the call was about, but he definitely did not say that Omar
15 gave him any false information. All he talked about was he
16 said -- he described the merits of his KIT Media investment,
17 and you remember that Mr. Maiden said that he believed that
18 Omar really believed that the KIT Media investment had a lot of
19 value. There was nothing false said on that phone call.

20 We tried to ask him about what the specific
21 information was that he received that he agreed with Omar to
22 convey to investors, and he says that Enable had any value
23 whatsoever. We already talked about that, right? Because it
24 was made clear in the agreement that Mr. Maiden had that with
25 Enable that had been converted to a debt interest. There's

HCMTTUZ2

Summation - Mr. Jackson

1 nothing that Mr. Amanat knew about that there's been any
2 evidence about in terms of false information and about that
3 being communicated to investors.

4 So we asked him: What else? He said the call with
5 Jesse Ellington when he said that everything would work out.

6 Well, everything is going to work out is an ambiguous
7 concept. It's a statement of optimism, ladies and gentlemen,
8 it's not a fraud. He told them that -- the testimony was on
9 the phone call Mr. Amanat made clear they were dealing with an
10 illiquid investment that Maiden Capital had, and Omar was
11 willing to make a loan on the basis of it, and he was willing
12 to because he thought that the KIT Media value that Maiden
13 Capital had was worth a lot of money.

14 And he acknowledged that the term "having an okay
15 month" was not clearly defined. These are vague, vague
16 concepts. They're not proof of Mr. Amanat attempting to
17 defraud anyone.

18 We asked Mr. Maiden: You do agree with me, right,
19 that in terms of your calculation of the overarching value of
20 your fund, Mr. Amanat had no way of knowing how you were
21 supposed to calculate a number of different positions in your
22 find, right?

23 And he said: That's fair, yes.

24 So the only number that the government is focused on
25 is the value of the fund that gets broken into pieces into

HCMTTUZ2

Summation - Mr. Jackson

1 these statements that go to Maiden investors. And here
2 Mr. Maiden is acknowledging Omar had no way of knowing whether
3 the number that Mr. Maiden was calculating was correct.

4 But what do we know? Omar was repeatedly trying to
5 get Maiden to give as accurate a number as he could.

6 Stephen Maiden: You engaged in discussions with Omar
7 Amanat where he stressed to you that he believed it was very
8 important for you to disclose everything that was happening in
9 terms of the machinations around KIT Media and KIT Digital
10 investments, right?

11 Answer: He brought it up a few times.

12 Right. In fact, you pushed back on certain occasions
13 and said I can't disclose X, right?

14 Right.

15 You're not guilty of participating in a conspiracy
16 with someone to hide something when you don't know the
17 investors. Mr. Amanat wasn't the person who was friends and
18 family with the Maiden Capital investors. He was another
19 outside party who had a business relationship with them, and he
20 was saying to Mr. Maiden you need to make sure that you
21 disclose everything that is going on with that. That's
22 acknowledged in Mr. Maiden's testimony. That alone is
23 sufficient for to you acquit Omar Amanat.

24 The government cannot establish proof beyond a
25 reasonable doubt when Mr. Maiden, the only substantive witness

HCMTTUZ2

Summation - Mr. Jackson

1 in this case, acknowledges that Mr. Amanat was telling him,
2 stressing to him that he believed it was very important for him
3 to disclose everything. That's Mr. Maiden's testimony. That's
4 not proof beyond a reasonable doubt.

5 He also -- Maiden also admitted that Mr. Amanat had
6 told Maiden that he needed to appropriately mark down the value
7 of the fund to whatever extent any of these investments were
8 overvalued with regard to anything, including Enable. And said
9 in the same vein he told you to mark down -- mark the fund
10 down, and he says: Yeah, he may have said that.

11 What do you mean he may have said that? That is
12 central to the questions in this case, and Mr. Maiden is being
13 casual about that.

14 Again, lots of complication in terms of how it was
15 calculated, the value of KIT Media, but one thing that was --
16 of the KIT Media investment and the KIT Digital investment.
17 The one thing that was clear is that Mr. Maiden acknowledged
18 that just the 2.5 percent sales fee that was he was going to
19 get was worth more than the value of the entire fund, worth
20 more than 19 million. So Mr. Amanat knew that he had that
21 2.5 percent sale fee and this interest in this company that was
22 going to be sold for as much as \$700 million, he had no reason
23 to believe that the number that Mr. Maiden was providing to his
24 investors in terms of what the overarching value of his fund
25 was wrong.

HCMTTUZ2

Summation - Mr. Jackson

1 And we asked him: You actually -- you understood that
2 Mr. Amanat actually believed that KIT Media, the KIT Media
3 investment had a lot of value, right?

4 He says: To my understanding, Omar Amanat thought KIT
5 Media had a lot of value?

6 Right.

7 I think we all hoped and believed it did.

8 Also, Mr. Maiden was not including the sales fee in
9 the calculation of this fund that went to investors, which
10 means that at the time, as Mr. Maiden said to his attorney in
11 his confidential communication with the attorney, he was
12 actually, in his own mind, undervaluing the fund.

13 What about here? We asked him: This is in the same
14 vein, he told you to mark the fund down and may have also told
15 you you should shut the fund down and distribute all the assets
16 in kind.

17 Why is that important? I know we stressed this "in
18 kind" to you a bunch of times, and it may not be clear to you
19 why that's important. Because if you distribute in kind, you
20 have to open up the books of the firm, you have to give all of
21 the assets in equal parts or appropriately equal parts to each
22 of the investors. It's a full disclosure thing. He would have
23 had to give them the pieces of the Enable debt.

24 And this is why Mr. Maiden didn't want to do it. This
25 is why Mr. Maiden kept saying these are idiotic suggestions.

HCMTTUZ2

Summation - Mr. Jackson

1 I'm not asking you whether it was idiotic, I'm asking you
2 that's what he told you to do, right?

3 And he said he mentioned these types of foolish ideas.

4 The foolish idea that he's talking about that Omar
5 mentioned to him would have been full disclosure to the Maiden
6 Capital investors. It was shutting the fund down and
7 distributing all of its assets in kind. That would include the
8 Enable debt interest that they had that it be converted to a
9 promissory note. Mr. Amanat does not have any fraudulent
10 intent. There's no proof of that.

11 Okay. Fifth, and I'm racing through these, Maiden's
12 investor understand completely that he was invested in illiquid
13 assets. This is an important point because you saw in the
14 agreement it says very explicitly they're allowed to invest in
15 illiquid investments.

16 Why is that important? Because the government tried
17 to suggest that because Mr. Amanat provided Mr. Maiden with a
18 loan that he must have known that the investors were being
19 deceived, because otherwise Maiden would have just been able to
20 liquidate his assets and provide the cash.

21 Well, that's not the case. Mr. Amanat had no reason
22 to believe that providing a loan to Mr. Maiden would work as a
23 deception to the investors, because the investors knew that the
24 fund was largely illiquid. Illiquid means you can't sell all
25 the assets. It means they can't be readily disposed of. Which

HCMTTUZ2

Summation - Mr. Jackson

1 means if someone wants a cash redemption, you have to get the
2 money from somewhere else.

3 And we asked him: Your investors knew that you were
4 engaged in the purchasing of illiquid securities, correct?

5 Yes.

6 And when we asked Jesse Ellington, he said you were
7 aware of the provision that said Maiden Capital was allowed to
8 make a distribution to your or redemption to you in kind.

9 And he said: It's right there in the agreement, it's
10 in the contract.

11 We asked Mr. Maiden that he understood that a fund is
12 allowed to take out a loan on its securities and it's entitled
13 to pay redemptions to its investors using loan funds if it
14 believes that's a financially appropriate way to deal with
15 those redemptions. Of course he believed that was appropriate.
16 That's why he told SS&C, his fund manager, very explicitly what
17 he was doing. If he thought that it was somehow illegal for
18 Omar Amanat to loan him money to pay a redemption, there's no
19 way he would have said explicitly in the email that you saw to
20 John Rizzi: I'm taking a loan out on my illiquid KIT position
21 in order to pay a redemption to my investors. And that's what
22 he did. He said I set up a loan to meet redemptions.

23 What else? This is the point more explicitly about
24 the liquidity: Loaning money does not demonstrate any guilty
25 knowledge. This is him again talking with SS&C about this.

HCMTTUZ2

Summation - Mr. Jackson

1 What else? The text messages underscore the extent to
2 which this whole idea that when Omar Amanat loaned him money
3 that this shows that he was part of a conspiracy is ridiculous.
4 If you look at the actual text messages, so many of them have
5 nothing to do with what Mr. Maiden's business interests were.
6 Is Mr. Maiden begging for money to live? Look at this, he said
7 I have no money to live. I can't buy peanut butter and jelly.

8 What else? The government -- the people that the
9 government claims were co-conspirators hated each other, were
10 playing each other, and there's no evidence of actual agreement
11 on any illegal objective.

12 Look here. This part was amazing because we're asking
13 Mr. Maiden about this conversation he was having with Kaleil
14 Isaza Tuzman where he's trashing Omar Amanat, and he said skull
15 is kind, in reference to Mr. Amanat. This is in the spring of
16 '09, this is at the start of when the supposed conspiracy or
17 scheme related to Counts One, Two and Three was going on.

18 And Mr. Maiden acknowledged: You were kind of playing
19 both sides throughout the period between 2008 and 2012. And he
20 said whatever it took to get the money back, yes.

21 In some communications with Mr. Amanat you say
22 unfavorable things about Mr. Isaza Tuzman, right?

23 Right.

24 In communications with Isaza Tuzman you would say
25 unfavorable things about Mr. Amanat, right?

HCMTTUZ2

Summation - Mr. Jackson

1 Right.

2 These are business men engaged in an attempt to
3 manipulate each other in a very aggressive deal-making
4 situation. This is not agreement. There's no evidence of
5 meeting of the minds.

6 You saw in this email communication Omar Amanat again
7 was everyone encouraging Maiden to take an aggressive posture
8 in the negotiations with Mr. Isaza Tuzman. He said you're not
9 being aggressive, total passive meek duck. This was an
10 aggressive negotiation situation.

11 What else? Government has not produced logical
12 evidence of motive. We talked about that a little bit
13 yesterday. I'm not going to get further into it, but that
14 alone is sufficient for you to find Omar Amanat not guilty.

15 I mean the only point I want to make in addition to
16 what I said yesterday about this is that "motive" has the same
17 root as the word "motivated," and if you just look at the text
18 messages, they underscore the extent to which Omar Amanat was
19 not motivated to engage with Stephen Maiden. These are the
20 messages that the government put in. It's just Stephen Maiden
21 texting Omar Amanat over and over and over and over and over
22 and over again: Please call me. Dude, when are we talking?
23 Respond. Question marks. Over and over again.

24 Mr. Amanat responds once after -- in this series of
25 messages after Maiden hit him numerous times: Call me ASAP.

HCMTTUZ2

Summation - Mr. Jackson

1 Please, Bro, please call me. When are we talking? I'm very
2 disappointed. It's rude. Answer the phone. What the fuck?
3 Show me the respect to tell me when to talk.

4 Mr. Amanat is like: Please, I'm just up. A had a
5 late night.

6 All right. Okay. I really need your focus. And he
7 keeps texting him over and over again.

8 Mr. Amanat is not motivated to engage in activity with
9 Mr. Maiden, it's Mr. Maiden who is just constantly hitting up
10 Mr. Amanat. You see that over and over again.

11 What else, what's the ninth one? The government has
12 offered no proof that Omar understood anything that was being
13 done to constitute market manipulation, and they failed to show
14 that he did. And they somehow failed to introduce any evidence
15 that he did anything in furtherance of the supposed market
16 manipulation agreement in all those years after it was signed
17 in 2009.

18 Now you're going to see an instruction from the judge
19 about the time period that relates to Count Four, the supposed
20 market manipulation agreement. I want you to take a look at
21 that very closely and focus in on that. Because with regard
22 to -- it's very clear, the government does not have evidence
23 showing that Omar was engaged in this. The only thing that
24 they have repeatedly focused on is the text message where
25 Mr. Amanat says that he raised -- that without Omar he says to

HCMTTUZ2

Summation - Mr. Jackson

1 Mr. Isaza Tuzman: You want have Mr. Maiden's open market
2 purchases. That's called fund raising. That's completely
3 legal. In fact, half of the businesses in the city you know
4 from your own common sense, that's what investment banking is,
5 is raising funds for stock purchases in the open market.
6 That's not illegal. And there's nothing in the agreement that
7 indicates illegality.

8 And also this is a point that Mr. McRae touched on,
9 but you don't sign legal agreements if you think that the legal
10 agreement equals a criminal conspiracy. It doesn't make any
11 sense. Why would you do that? What would be the point of
12 going through that? What would be the point of involving
13 attorneys? It wouldn't be enforceable. You would be
14 terrified.

15 Also, they introduced evidence that Omar was a person
16 who called to suggest the agreement, which I suggest to you
17 suggests he's innocent, the fact that he wanted to draw up an
18 agreement to set out exactly what they were agreeing about
19 incentivizing Mr. Maiden to purchase some stock, but he
20 couldn't remember any details about it.

21 He said -- when we asked him about it, all he could
22 say is that, we said -- the Court said: You need to focus.
23 The question is what was said, not your understanding, not what
24 was said.

25 And he said: He told me in several conversations that

HCMTTUZ2

Summation - Mr. Jackson

1 there was an aggressive seller that could really hurt the stock
2 called Ram Capital, and KIT Digital was looking to raise money
3 short term in the next month or so, and that was Vision
4 Capital, so they were looking at the stock closely.

5 That's not saying: Manipulate the stock, Steve.
6 That's saying: Yeah, there's people selling, we want to
7 raise -- they want to raise some money. It would be good if
8 you want to buy some more of the stock if you think it's this
9 great investment.

10 What about Mr. Carpi? Mr. Carpi acknowledged that
11 there are sometimes deals where a company will give a certain
12 investor preferred stock and warrants in connection with the
13 purchase of the stock. Yeah, that could be the case.

14 And he said: Sometimes a decision to do that is part
15 of a company's decision to try to incentivize that investor to
16 make the investment.

17 And he said: Yeah, that could be.

18 And that's not something that's necessarily illegal,
19 correct?

20 And he said: Correct.

21 Because, ladies and gentlemen, you know from your own
22 common sense and life experience that companies do fund raising
23 all the time. People incentivize investors. The agreement
24 itself is not illegal, and there's no proof, there's no
25 conversation involving Omar Amanat saying that he wants

HCMTTUZ2

Summation - Mr. Jackson

1 Mr. Maiden to manipulate the stock. There's nothing.

2 What's tenth? The tenth reasonable doubt is all the
3 memory problems that the witness in this case had and the
4 fundamental unfairness of that fact.

5 Now this is a case, ladies and gentlemen, where I
6 submit to you words matter. What was actually said in the
7 conversations that are at issue matters, and it matters in a
8 big way, because the government is trying to suggest that in
9 some of the conversations between Mr. Maiden and Mr. Amanat
10 there was this expressed -- something that you can infer was
11 criminal knowledge.

12 But we don't know what was said because not even
13 Mr. Maiden could say that he remembered the details of things.
14 When we asked him -- and this is in the second column, I say:
15 You don't actually remember the exact words you used in the
16 conversation that you had with Omar Amanat about encouraging
17 you to disclose what was happening in these transactions, do
18 you?

19 And he says: The exact words I don't remember, I
20 remember the substance.

21 Right. You don't remember the words though, right?

22 I guess not, not exact, no.

23 That's so important because this is the
24 conversation -- this is one of the conversations where
25 Mr. Amanat is telling Mr. Maiden to disclose things to the

HCMTTUZ2

Summation - Mr. Jackson

1 investors, and Mr. Maiden is saying that he kind of blew that
2 off, but he can't even remember what he said to blow it off.

3 That's not proof beyond a reasonable doubt. You can't
4 find a man guilty when the only substantive witness who came
5 into the courtroom testified that he was told about the
6 supposed fraudulent misrepresentations you need to disclose to
7 the investors, and he said: Oh, but I told them these are
8 ridiculous ideas.

9 I'm like: What did you actually say?

10 And he can't tell us what he said after he's been
11 prepping with the government for years? That's not proof
12 beyond a reasonable doubt.

13 Mr. Ellington, the only Maiden Capital victim who came
14 into this case, the only one, he couldn't even remember what
15 Mr. Maiden told us about the conversation. Mr. Maiden made
16 clear in his testimony it was about the fact that Omar was
17 loaning money, which was the truth. And Mr. Ellington didn't
18 even remember that fact.

19 There was a point in your direct testimony where you
20 described the second contact you had with Mr. Amanat, the brief
21 call you had?

22 Yes.

23 That was a long time ago, right?

24 Yes. He said it would have been in 2012. So I
25 remember the call, the date I'm a little more fuzzy on.

HCMTTUZ2

Summation - Mr. Jackson

1 And I think when you were being asked about it on
2 direct you were struggling to remember certain details of the
3 call, right?

4 Yes.

5 In fact, even as you sit here right now, you don't
6 remember the precise words that were said during the call, do
7 you?

8 And he said: No, I don't.

9 We said: Sir, isn't it a fact that the actual reason
10 for the call was that you had requested to speak with the
11 person who was lending money to Mr. Maiden?

12 And I said: Sorry, sir, please tell me.

13 And he said that I can't answer yes or no because I
14 can't remember whether it was specifically to speak to the
15 lender.

16 Mr. Maiden told you that that was the only purpose of
17 the call. The documents told you that that was the only
18 purpose of the call.

19 This is the communication between Mr. Ellington and
20 Mr. Maiden. He says, "I'm available to talk with Omar any
21 time," after Mr. Maiden says, "Still trying to get lender calls
22 set up."

23 So it was made explicit to Mr. Ellington back in 2012
24 Omar Amanat is lending money to Steve Maiden in order to pay
25 the redemption. Mr. Ellington didn't even remember that.

HCMTTUZ2

Summation - Mr. Jackson

1 It's a real problem when the government is asking you
2 to find a man guilty when they are held to the standard, the
3 highest standard in the law, proof beyond a reasonable doubt,
4 and they only brought in one Maiden Capital investor and he
5 can't remember what his conversation was with Omar Amanat.
6 That alone is reason to find Mr. Amanat not guilty.

7 The government, he acknowledged, didn't even discuss
8 the key email that he looked at during cross-examination with
9 Mr. Amanat.

10 What's the eleventh reasonable doubt? It's the
11 improper nature of Steve Maiden having secret access to a high
12 ranking Justice Department official and getting a sweetheart
13 deal on cooperation, uncharged crimes and forfeiture.

14 Now I'm not going to go that deep into this because it
15 speaks for itself.

16 (Continued on next page)

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HcmWtuz3

Summation - Mr. Jackson

1 MR. JACKSON: But, ladies and gentlemen, I think it's
2 stunning that Mr. Maiden acknowledged that when we asked him
3 about this, he was speaking with a high-ranking Justice
4 Department official, and she told him, You need to stay off the
5 phone, be careful what you say. Right? And he acknowledged
6 she may have said that, but he said I can't really recall the
7 conversation.

8 And then you saw the conversation with Mr. Yavelberg
9 where he's saying: Use Jamie's guys, the guys who visited from
10 the FBI work for her. We will write the shit.

11 These are the text messages between Mr. Yavelberg and
12 Mr. Maiden where Mr. Maiden says, after Mr. Yavelberg says,
13 just so you can comprehend, he says, "Believe me, I do. Just
14 do your part." And the government never even asks Mr. Maiden
15 what he was talking about when he said, Just do your part. I
16 mean, that's stunning. You know, Mr. Maiden says in these
17 communications: "I will try. Just keep your lips sealed shut
18 on it." The government asked him no questions about that.

19 Look at this. This is amazing. Mr. Yavelberg says,
20 "Don't fuck this up. She and I have said no emails or phone
21 calls, none except about sports or weather. Stick to that."
22 He says, Thanks.

23 "Don't thank me, please. Just stick to the fucking
24 plan."

25 What was the plan? I mean, the government never

HcmWtuz3

Summation - Mr. Jackson

1 elicited from the main cooperating witness, the only
2 substantive witness, what was the plan that he had with
3 Mr. Yavelberg. Just the absence of information alone is
4 reasonable doubt. It is wildly improper and unfair.

5 What's the 12th reasonable doubt? It's the
6 government's failure to introduce evidence of even the most
7 basic aspects of the supposed crimes here. I talked about this
8 briefly yesterday, but I want to put a finer point on this.

9 The government has failed to identify any interstate
10 wire that was contemplated or sent in furtherance of Counts One
11 and Two, the wire fraud counts. OK? They have failed to show
12 any interstate wire to the Southern District of New York, which
13 is a requirement you will hear about when the judge gives you
14 instructions. OK? And this is not an area in which the
15 government can ask you to speculate.

16 I expect when Mr. Williams gets up, he will say, Oh,
17 there were a bunch of conversations, one of them must have been
18 a communication over interstate wires. That's not acceptable.
19 You have to listen very closely to the judge's instructions.
20 The instructions are going to tell you they have to prove
21 beyond a reasonable doubt. This isn't a technical matter.
22 This is a wire fraud scheme that's charged. They have to prove
23 that there was a specific wire sent in furtherance of the
24 conspiracy that crossed state lines. They've introduced no
25 location information whatsoever about any of the communications

HcmWtuz3

Summation - Mr. Jackson

1 in this case. All they can ask you to do is speculate.

2 And what do you know? Mr. Amanat was in various
3 places at different times, as was Mr. Maiden. They both talked
4 about traveling. Mr. Amanat and Mr. Campion talked about
5 running into Mr. Amanat in Prague. There were communications
6 where Mr. Amanat talked about being in L.A. sometimes, being in
7 San Francisco sometimes. Mr. Maiden talked about traveling to
8 New York multiple times. Some of the key text messages that
9 they introduced, Mr. Maiden and Mr. Amanat were actually
10 sitting across the table from one another. They cannot ask you
11 to speculate about the wire, and there is no proof. It is an
12 automatic indication that they have failed to meet their
13 burden.

14 What else? They focus in on the fact that Mr. Amanat,
15 related to this point, Mr. Amanat wrote a registered address in
16 Manhattan on one document before the time period of Counts One
17 and Two. Right? This is in December 2008, somebody said,
18 Write your registered address, and it was an address in New
19 York. OK? That doesn't give you an indication that he was
20 actually in New York at the time of any particular
21 communication.

22 And what else? Special Agent Amato told you that when
23 she looked up the home address of Mr. Amanat, it was actually
24 in New Jersey. OK? So we don't know. The government has not
25 introduced any real evidence that Mr. Amanat was living in New

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Summation - Mr. Jackson

1 York. OK? People put a registered address, people have many
2 registered addresses. You can have a business address. You
3 can have an address where you receive mail. You can have an
4 additional apartment. But even so, even if they had
5 established that, that would be insufficient for you to
6 conclude that any particular wire was sent. And ladies and
7 gentlemen, this is the government's burden, and it's serious.

8 THE COURT: Five more minutes, Mr. Jackson.

9 MR. JACKSON: Yes. Thank you, Judge.

10 I just want to make three points about what I expect
11 is going to happen soon, which is the government is going to
12 stand up and give a rebuttal summation. Mr. Williams is a very
13 good attorney. I expect he'll make a lot of points. We
14 probably won't get an opportunity to respond to them, but I
15 want to ask you, please -- it's your final duty before you
16 begin deliberations -- to continue to interrogate what the
17 government is saying, at least contemplate what might
18 Mr. Jackson or Mr. McRae say in response to that if they had an
19 opportunity? Because the arguments that are going to be made
20 are not the evidence. The evidence is what you actually saw
21 and the lack of evidence is what you actually saw during the
22 course of the trial. And I'm just asking you to please
23 continue scrutinizing it.

24 The government argues that they didn't pick their
25 witnesses. That's not true. They did pick their witnesses.

HcmWtuz3

Summation - Mr. Jackson

1 They selected the people they wanted to give cooperation
2 agreements to, and they tried to do it in front of you in this
3 courtroom, and you heard they repeatedly lied. They repeatedly
4 withheld important information, and they repeatedly engaged in
5 testimony that is not credible. It doesn't hold up. They may
6 argue that there's no honor amongst thieves or something like
7 that. Well, the only proven thieves in this case are Maiden,
8 Smyth and Campion. OK? So that's an argument which you should
9 reject. The fact that these men were engaged in serial
10 deception of one another, that they did not like each other,
11 that they were engaged in aggressive negotiations, shows that
12 there was no conspiracy, and the government hasn't proven that.

13 Any man who is standing next to Mr. Maiden, this is a
14 man who has mysteriously all the emails missing right up to the
15 point, the starting point of the supposed schemes in this case.
16 OK? This is a man who has no explanation for that and a number
17 of other details. It doesn't make sense.

18 I'm wrapping up, and I just want to say at the
19 beginning of the case I told you a little bit about a situation
20 that happened in my elementary school when I was a kid. This
21 is actually a picture of my elementary school, and the reason I
22 bring it up is in that story, you heard about basically our Boy
23 Scouts situation didn't work out. There was a lot of finger
24 pointing between the teachers and the principal of my school,
25 and the fact of the matter is that none of those people had

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1 done anything. OK? That's what came out of that.

2 The reason I told that story is because I hope you
3 understand you can have a lot of proximity to people who are
4 engaged in wrongdoing and not actually be engaged in wrongdoing
5 yourself. Mr. Maiden had so much interaction with so many
6 people. OK? He's interacting with SS&C. They had more
7 details about what was happening than Mr. Amanat ever could
8 hope to have. He's interacting with those people, and Mr.
9 Amanat never had exposure to the knowledge that would have
10 allowed him to have the fraudulent intent to defraud the Maiden
11 Capital investors.

12 I think it's quite likely that back then, when I was a
13 kid, if email existed, when my principal figured out that the
14 money had been missing, there probably would have been frantic
15 emails between him and the teachers saying, This is a disaster,
16 people are going to blame us, and those could have been
17 interpreted out of context. Please don't interpret them out of
18 context. Please hold the government to its extraordinarily
19 high burden and focus in on what's actually charged, not
20 distractions, not background, not things that don't actually go
21 to the charges, but what is the actual evidence that
22 establishes that Mr. Amanat intended to defraud Maiden Capital
23 investors.

24 There is no evidence like that. The evidence
25 demonstrates that Mr. Amanat is innocent. The evidence

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Rebuttal - Mr. Williams

1 overwhelmingly shows that, and so when you go back to
2 deliberate, I'm going to ask you to return a verdict of not
3 guilty.

4 I deeply, deeply appreciate your time. Thank you.

5 THE COURT: Ladies and gentlemen, we'll take a recess
6 before we hear the government's rebuttal.

7 (Jury not present)

8 THE COURT: Please be seated.

9 We'll resume in about ten minutes.

10 MR. WILLIAMS: Thank you, your Honor.

11 (Recess)

12 THE COURT: Mr. Williams, are you prepared to proceed?

13 MR. WILLIAMS: Yes, I am, your Honor.

14 THE COURT: All right. Please bring in the jury.

15 MR. JACKSON: Your Honor, I'm very sorry, but my
16 client is not here. We're getting him from the bathroom. I'm
17 going to need another 20 seconds to retrieve him from the
18 bathroom.

19 THE COURT: All right.

20 Are we all set, Mr. Jackson?

21 MR. JACKSON: Yes, your Honor.

22 THE COURT: OK.

23 (Jury present)

24 THE COURT: Please be seated.

25 Ladies and gentlemen, we will now hear the

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Rebuttal - Mr. Williams

1 government's rebuttal summation.

2 Mr. Williams.

3 MR. WILLIAMS: Thank you, your Honor.

4 Good morning, ladies and gentlemen.

5 I tried to listen very carefully to the arguments that
6 the defense lawyers have made over the past couple of days. I
7 tried to focus really carefully on what they were actually
8 trying to tell you about why their very guilty clients are
9 actually really innocent. I tried to focus really hard on the
10 things they were focusing on and the things that they had no
11 response to, things they didn't even show you, things they
12 couldn't talk about.

13 One thing that actually came out really clearly is
14 that each defendant has now conceded -- conceded -- that there
15 was a fraud going on at KITDigital and at Maiden Capital.
16 Right? No doubt about that. No doubt about it; they've
17 admitted that. But they've tried their absolute best to
18 convince you that they had nothing to do with it, despite the
19 fact that three witnesses have come into this courtroom, who
20 have pled guilty to committing fraud at KITDigital and Maiden
21 Capital and pled guilty to committing those frauds with these
22 men. They tried to say they didn't know about it.

23 Now, these so-called visionaries, right, these
24 business visionaries, I mean, Kaleil Isaza Tuzman, they told
25 you, was able to predict the iPhone. Omar Amanat saw that

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Rebuttal - Mr. Williams

1 there was some teenage vampire movie that was going to make a
2 lot of money. These men can see around corners, they're
3 visionaries, but now somehow these business visionaries are
4 blind -- blind -- to the things that are going on all around
5 them. They're living in a den of thieves, and they've got no
6 idea. They want to tell you that they're blind visionaries.
7 That's the basic point, right? That's what you have to buy.

8 As I sat here listening to those arguments, I kept
9 being reminded of an ancient proverb. Some people think it
10 traces back to ancient China. Some people think it goes back
11 to ancient Greece. It doesn't matter. The universal principle
12 that stands behind it is this: the fish rots from the head
13 down. That's a proverb about accountability and corruption.
14 When an organization gets taken over with rot and fraud, look
15 to the top. Look at the head. See what's happening there.

16 Kaleil Isaza Tuzman was KITDigital. Right? When he
17 took over KITDigital, he looked in the mirror and he decided of
18 all the names in the world I could possibly give this company,
19 I'm going to name it after me. I'm going to name it after me.
20 And then when he got there, he handpicked Robin Smyth, he
21 handpicked Gavin Campion, he handpicked Rima Jameel. These are
22 his people that he put in charge, he put in place, and when he
23 got his hands on that company, it started to stink with fraud:
24 K3.

25 And now that he's been caught, what is he trying to

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Rebuttal - Mr. Williams

1 convince you? He's trying to blame Smyth, blame Campion, blame
2 Rima Jameel. "I didn't know."

3 Same thing with Omar Amanat. He's the one who
4 precipitated this whole disaster at Maiden Capital because of
5 that Enable thing, whatever that is. He blew a multimillion
6 dollar hole in Maiden Capital.

7 Steve Maiden, once he learned about that Enable hole,
8 the first person he called was Omar Amanat. The whole thing
9 got kicked off because of this. Now, Maiden is sitting in
10 prison. Right? You saw him. He's in a jumpsuit. That's some
11 sweetheart deal he got, right? A seven-year prison sentence,
12 testifying in a jumpsuit. Right? Maiden is in prison, why,
13 because he was lying to his investors, because of the same
14 "criminal behavior" and "jail time" Omar Amanat was talking
15 about in that text message, which we're going to come back to
16 in a moment. So now that Omar Amanat's been caught, what does
17 he say? I didn't know about it. "Criminal behavior, jail
18 time" actually meant noncriminal behavior and no jail time. It
19 doesn't make any sense.

20 Now, I'm not going to have enough time to go through
21 all the defense arguments in this rebuttal. They made a whole
22 lot of arguments, and a lot of them are ridiculous, but I want
23 to just be clear about a couple of things. We don't have to
24 respond to everything because the evidence speaks for itself.
25 The evidence speaks for itself, and there was a lot said

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Rebuttal - Mr. Williams

1 yesterday, particularly by Mr. McRae, a lot of deeply personal
2 attacks on the government and our motivation and what we're
3 doing here.

4 I want to make one thing very clear. It is an honor
5 and a privilege to represent the government in this trial, to
6 sit at this table, take on that burden, and we expect to take
7 any blow, whether it's high or it's low. It does not matter.
8 We will turn the other cheek. It is not about us. It is not
9 about us. It's about these two men and what they did. It's
10 not even about the defense lawyers. Mr. Jackson can come in
11 here with all his movie analogies and talk about Santa.
12 Mr. McRae can come up here and tell you about things and give
13 you rhymes. Right? Just because it rhymes doesn't mean it's
14 actually important. Right? It's about what their clients did.
15 That's what we're going to focus on. Our duty, this table's
16 duty is to look at the facts and take them where they lead.
17 And where did they lead? To a corrupt CEO and his
18 smooth-talking investor friend -- that's it -- to the head of
19 the rotten fish. That's why we're here.

20 Now let's talk about a couple deeply misleading
21 defense arguments that we just have to respond to before we dig
22 in to the actual counts.

23 Now, one of these arguments is that all the
24 cooperating witnesses are liars. Right? That was the main
25 thing they tried to argue to you: Maiden's a liar, Smyth's a

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Rebuttal - Mr. Williams

1 liar, Campion's a liar. They spent a lot of time focusing on
2 this argument, and the reason they had to do it is because if
3 you believe the cooperating witnesses, if you believe that
4 they're telling you the truth, then their clients are guilty.
5 They have to tell you that all these men are lying because it's
6 an act of desperation.

7 The alternative is unacceptable. It would mean their
8 clients are guilty. And you have to think about the kind of
9 conspiracy theory, right? You would have to really engage in a
10 big, dark conspiracy theory where these three men, separately,
11 all come into this courtroom having admitted to being
12 criminals, having told the government what they did, and
13 sitting with these cooperation agreements that would subject
14 them to a perjury prosecution if they lied to you. All of
15 these men would have to independently come in here and take the
16 bet that they're going to just lie. Right? Face a ton of time
17 in prison. It makes no sense. But they have to convince you
18 that not one, not two, all three of these men are independently
19 lying to you. It doesn't make any sense.

20 MR. McRAE: Objection, your Honor. Improper burden
21 shifting.

22 THE COURT: Sustained.

23 Just to remind you, ladies and gentlemen, the defense
24 doesn't have any burden to do anything here. They don't have
25 the burden to offer evidence. They don't have the burden of

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Rebuttal - Mr. Williams

1 making any particular arguments. The burden on all these
2 matters is always on the government.

3 Go ahead.

4 MR. WILLIAMS: And we embrace that burden. That's a
5 burden that we wear proudly. It's the same burden that's
6 applied to every single criminal case in this country since
7 this nation was founded.

8 Now, look, there's an obvious reason why they also
9 argue that somehow the cooperators colluded in this case,
10 right? They coordinated their testimony, tried to say that
11 Smyth and Campion got together and tried to sort it all out.
12 It doesn't make any sense. If that were true, then the stories
13 would be 100 percent the same, and you're coordinating all the
14 details to match up just perfectly. Different witnesses
15 remember different things because that's how human memory
16 works.

17 All of you who have been sitting in this trial for two
18 months, hearing the same evidence, when you go back to the jury
19 room, you're going to remember different things, right? Does
20 that make you a liar? No. But under the defense theory, it
21 would make you inherently suspect, untrustworthy. Juror number
22 whatever, you can't rely on that person's memory because it's
23 different from someone else's. That's not how memory works.

24 Now, I just want to respond to one thing that
25 Mr. McRae said yesterday about Gavin Campion. He actually

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Rebuttal - Mr. Williams

1 ridiculed him for remembering vivid details from one particular
2 event. It was a day in Prague where he tried to blow the
3 whistle on the accounting fraud. He went to the board of
4 directors. He was sitting in a car. He tried to tell this guy
5 Wayne Walker about the fraud, and Wayne Walker as opposed to
6 listening to him jumped out of the car, grabbed his umbrella
7 and took his bag. Gavin Campion stayed in that car and was
8 weeping -- weeping -- because he could not be heard.

9 Mr. McRae took that story, and what did he do? He
10 ridiculed Gavin Campion for calling a bag a satchel -- a
11 satchel. Gavin Campion is British; he lives in Australia. So
12 what he uses a different word for a bag. What does that
13 matter? The point of the story was that Gavin Campion was
14 trying to do the right thing. There's nothing to joke about
15 that. What are we doing here if we're calling a man a liar
16 just because he remembers a vivid detail from a key moment in
17 his life when he was trying to do the right thing and stop a
18 fraud.

19 The last thing I want to respond to you about, before
20 I get into the counts, is this false notion that just because
21 the government didn't call more witnesses, somehow there's a
22 problem with our case. We believe in a concept of mercy. Do
23 you want to be here in 2020? No. We all want to go home, and
24 frankly, if there are any witnesses that they thought would
25 help them -- obviously they have no burden to call anyone --

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Rebuttal - Mr. Williams

1 but you saw what they did. When they thought that Andy Steward
2 would help them, they flew all the way to England to hear from
3 Andy Steward.

4 MR. McRAE: Objection, your Honor. Notwithstanding
5 that qualification, it is improper burden shifting to think of
6 qualitative comparison.

7 THE COURT: As I said before, ladies and gentlemen,
8 the defendants have no obligation to offer any evidence at all,
9 so keep that in mind as you listen to these arguments.

10 Go ahead, Mr. Williams.

11 MR. WILLIAMS: When you hear arguments from the
12 defendants and you hear their witnesses, you can scrutinize
13 that.

14 What did Andy Steward tell you? What did their first
15 witness tell you? That businessmen do not belong in prison.
16 That's who they called. Anyone else out there in the world may
17 have said something similar. We don't know. They didn't call
18 anyone else, they have no burden to, but the point is the
19 government gave you sufficient evidence you could rely on: the
20 people that actually committed the crimes with these
21 defendants.

22 Let's get into Count Six. I want to talk about the
23 accounting fraud. I'm going to work my way backwards, because
24 Count Six is the accounting fraud and Tuzman only, and then
25 we're going to get to Omar Amanat.

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Rebuttal - Mr. Williams

1 On the accounting fraud, they've already conceded that
2 the accounting fraud happened, right? The only question is
3 whether Tuzman knew. I'm going to give you five reasons why
4 you can conclude that Tuzman knew.

5 The first reason, he knew it so well, the man gave it
6 a nickname. I'm going to repeat that. He knew it so well, he
7 gave it a nickname. You've got to think about your own
8 personal life. How many people in your personal life have you
9 given nicknames to? Maybe your spouse has a nickname. Maybe
10 your best friend has a nickname. Maybe when you were a kid,
11 you had a blanket or some toy you gave a nickname to. You only
12 give nicknames to things that you know really well. You don't
13 give nicknames to strangers, right? Things you have no idea
14 about?

15 These men are talking about the elephant and elephant
16 hunting, slaying elephants with their bare hands. They weren't
17 talking about multiton mammals in sub-Saharan Africa and Asia.
18 They were talking about fraud. It doesn't make any sense.

19 Mr. McRae spent a lot of time saying Oh, well, you
20 know, on the spreadsheet Robin Smyth showed to his client it
21 said ELEE on it. He said, Mr. Smyth, how many E's are in the
22 word "elephant"? That was the key question. Mr. Smyth said,
23 Well, there are two, but that word "ELEE" meant elephant to me,
24 and Mr. McRae said, Doesn't it mean "expense ledger for
25 excluded entity"? Robin Smyth actually laughed when he was

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Rebuttal - Mr. Williams

1 asked that question, and so did some of you. The whole thing
2 was preposterous.

3 Now, look, the second reason is that fraud was
4 literally on the agenda when Robin Smyth and Tuzman met.
5 Literally on the agenda. Remember, Smyth kept all these
6 notebooks when he was at KITDigital, and you saw some of the
7 notes from the notebooks. And remember, you didn't hear
8 anything in Mr. McRae's closing about these exhibits. This is
9 2190-B.

10 MR. McRAE: Objection.

11 MR. WILLIAMS: Fraud is literally No. 4 on the agenda.

12 MR. McRAE: Objection. Improper rebuttal.

13 THE COURT: Overruled.

14 MR. WILLIAMS: Fraud is literally on the agenda. It's
15 No. 4. Look at that. We asked Smyth about it:

16 "Q. Mr. Smyth, we'll go one by one, did you discuss fraud with
17 Mr. Isaza Tuzman?

18 "A. Yes." He goes on: "This was a list to meet with him,
19 yes. When I would have met with him I would have discussed the
20 back end, the fraud." So fraud was literally on the agenda
21 when Smyth was meeting with Tuzman.

22 Let's see what else he says. No. 19, "We are freaking
23 out people"; they're freaking out people.

24 Look at what else he says: "We are bringing now too
25 many people into it." We, not I. We. You've got to imagine a

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1 world in which Tuzman actually doesn't know about the fraud.
2 Imagine a world in which he doesn't know about the fraud and
3 he's meeting with Smyth. All right, Kaleil, let's get to item
4 No. 4, the back end, fraud. His response would be, What are
5 you talking about, the back end? What are you talking about?
6 Then he gets to "we're freaking out people." We're freaking
7 out who? What are you talking about? By the time he gets to
8 No. 21, "we're now bringing too many people into it," bringing
9 too many people into what? You can conclude that Tuzman knew
10 about this fraud because it's literally on the agenda.

11 Let's talk about the third reason. Everyone who
12 worked for Tuzman could not have possibly deceived him.

13 Let's talk about Rima Jameel for a second. Rima
14 Jameel is his personal lawyer. Right? He brought her into the
15 company. Not Smyth, not Campion. Kaleil Isaza Tuzman, that's
16 his lawyer. So in order for you to agree with the defense that
17 Kaleil Isaza Tuzman didn't know about the fraud, you'd have to
18 believe that Rima Jameel hid it from him. But as you know,
19 Rima Jameel and the defendant were not just lawyer and client.
20 They were personally close. Look at how they talked to each
21 other in the middle of the fraud:

22 "Hi, babe. I miss seeing you.

23 "I miss seeing you too. You should take a weekend and
24 come hang out with me. We can go to the beach, charter a boat
25 for the day. What do you think about buying a boat?

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Rebuttal - Mr. Williams

1 "I would love to do that. You are the only person I
2 trust to do that. Yes, we should. Can't wait to see you.

3 Right? So imagine a world in which Rima Jameel and
4 Kaleil Isaza Tuzman are on a boat in the middle of the fraud
5 right off the beach talking about "I miss you."

6 MR. McRAE: Objection, your Honor. There's no
7 evidence that this ever happened.

8 THE COURT: Overruled.

9 MR. WILLIAMS: You'd have to conclude that somehow she
10 didn't tell the person who she says "you're the only person I
11 trust to do that," she didn't tell him, Oh, by the way, by the
12 way, babe, I'm committing a fraud in your company, that's named
13 after you. Right? It makes no sense.

14 Let's talk about Robin Smyth. Now, obviously Robin
15 Smyth is the CFO. You'd have to believe that Robin Smyth also
16 hid the fraud from the defendant. That's a ridiculous
17 proposition. Why is that? Because Robin Smyth was the bird
18 dog in the relationship. That's the relationship between
19 Tuzman and Smyth. Tuzman's the hunter. He's going out and
20 hunting all these acquisitions. Robin Smyth was his bird dog.

21 Let's look at something about that. This is an email
22 from January 2012, right after the Sezmi transaction. They got
23 7.85 million and working its way around the world, and Tuzman
24 gets an email from Smyth. He sends it to Tomas Petru and to
25 Tuzman, saying: "I'm sending \$1 million. Send me an invoice

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1 for post-Sezmi acquisition integration and support services."

2 Petru responds, "Nothing received yet." Right? He's
3 telling Tuzman, I didn't get the money yet. This is \$1 million
4 in the 7.85 million in cash.

5 Tuzman's response: "Robin, can you bird dog this?"
6 Remember, I asked Smyth? I said: What's a bird dog?

7 He said, "A bird dog is a dog that goes hunting, and
8 maybe if a bird is shot, he chases down the bird."

9 Look, this makes sense, right? If a hunter is
10 shooting birds, but the hunter doesn't want to go in the
11 bushes, dig into the bushes and try to grab the bird, you might
12 get your arms all cut up, maybe get poison ivy or a tick. He
13 doesn't want that. That's why a hunter has a bird dog, a dog
14 you can send into the bushes to get that bird so your hands
15 don't get mud and blood on them, right? Robin Smyth was his
16 bird dog.

17 Do you think Smyth, he didn't tell you you were going
18 to chase money all around the world? No. That's why you have
19 a bird dog to do it for you, so when the time comes and the
20 questions come up, Well, did you know about the fraud, he can
21 say, No, I know my hands are clean, but look at that bird dog,
22 his hands are all dirty. That's exactly the role that Smyth
23 played. Don't be fooled.

24 And by the way, they made a big point of saying
25 there's no evidence that their client ever saw anything about

HcmWtuz3

Rebuttal - Mr. Williams

1 the 7.85 million means he's round tripping. He literally got
2 this invoice, this fake invoice, from Tomas Petru. They didn't
3 talk about this document at all. He said nothing like this
4 existed.

5 MR. McRAE: Objection, your Honor.

6 THE COURT: Overruled.

7 MR. McRAE: That mischaracterizes the evidence.

8 THE COURT: Overruled.

9 MR. WILLIAMS: This is just damning evidence. He
10 stood right here and said there was no evidence like this.

11 Look, you would also have to conclude that a man like
12 Kaleil Isaza Tuzman, who made it his job as CEO to dig into the
13 little expenses -- right -- these are taxi receipts, and
14 they're not even in English. He sends his assistant this
15 email: "Please have printed and brought to my hotel room
16 during the day so I can review." He's literally sitting in his
17 hotel room poring over faded taxi receipts like pocket trash
18 trying to make sense whether a hundred bucks of company money
19 is being spent properly. You don't think he saw \$1 million
20 going out the door with a fake invoice? Come on.

21 I want to jump forward to some of the chronologies,
22 the emails and text messages and Smyth's notebooks, the
23 chronology of events that shows you that Tuzman knew.

24 First of all, in 2011, September, Smyth and Campion
25 present this spreadsheet to Tuzman to show him the true state

HcmWtuz3

Rebuttal - Mr. Williams

1 of the elephant. Right? \$37 million, September 2011, tried to
2 get him to stop the fraud.

3 Right after that, in February 2012, there was an
4 argument between Smyth and Tuzman in Dubai. Smyth said:
5 "A. I remember I raised my voice during that conversation.
6 And I remember standing at the door of his apartment as I left,
7 and we stood there and I said, Look, I just don't know what I'm
8 going to do. I just need to think about it."

9 Smyth was threatening not to sign the 10-K, which
10 would have been a huge deal. It would've blown the whistle and
11 whole thing would have come crashing down.

12 Smyth also said:
13 "A. I remember I was emotional at the time and I said I'm
14 breaking every principle I ever stood for."

15 These are text messages between Tuzman and Smyth.
16 Right? Tuzman's talking about, right after the argument, "Hey,
17 maybe a new CEO can come in." And Smyth is telling Tuzman, "I
18 don't feel comfortable with that at all." Right? They're
19 talking about whether the new CEO can be controlled, someone
20 who didn't know the real position of the company. Now,
21 yesterday Mr. McRae said if the government's theory is true,
22 they'd've shown you text messages of Kaleil knowing what was
23 really going on. This is literally a text message of Kaleil
24 literally knowing what's going on.

25 Then it goes on. Smyth, in one of his notebooks,

HcmWtuz3

Rebuttal - Mr. Williams

1 wrote down what was in his head, right? What he was thinking
2 at the time about Kaleil leaving the company and what was
3 happening with the fraud, and look at what he wrote: "If
4 Kaleil leaves as CEO, that is day I leave as CFO. I am not
5 signing as only person who knows of BE." Back end, the fraud.
6 I don't want to be the only one who signs the 10-K, who knows
7 about the fraud. That's what's going on in his head.

8 "One alternative is to tell everyone we have been
9 BE'ing, which we have, run out of options." One option is to
10 tell the world about the fraud. That's what's going through
11 his head.

12 Smyth is scared, and he tells you exactly what he did
13 after that. Right? He got a burner phone, called up a lawyer,
14 trying to see whether he was going to blow the whistle, and
15 instead, what did he do, he decided to go to Tuzman and say,
16 Why don't you put \$8 million of your own money into the company
17 to cover up the fraud? And he agreed. If you don't know about
18 the fraud, why would you dig into your pocket and pull out \$8
19 million to cover something up? It doesn't make any sense. It
20 doesn't make any sense.

21 And look, he said: "I decided in my mind the biggest
22 problem and the most pressing problem was the hole we had in
23 the escrow accounts -- this is Smyth -- and I thought the best
24 course of action at that stage was to tell Kaleil that I wanted
25 him to replace the money in the escrow account."

HcmWtuz3

Rebuttal - Mr. Williams

1 Now, look, Smyth also went one step further. He told
2 you that he also demanded that Tuzman give him something in
3 writing -- in writing, on paper -- to show that Tuzman knew
4 about the fraud. And why did Smyth do that? He told you
5 specifically. I asked him:

6 "Q. What did you mean when you said you wanted evidence that
7 he knew what happened in the company?

8 "A. If at any future time there was an investigation, either
9 internally or externally, with the SEC or the prosecutors, I
10 wanted to have that email for evidence."

11 That's a smart bird dog. He wanted to show you that.
12 He knew he was going to be blamed.

13 Let's look at the assurance note. He makes very clear
14 that he was putting \$8 million into the company to cover up the
15 hole in the escrow accounts. This is the same day the 10-K is
16 filed, same day that Kaleil said 10-K's accurate, cash is
17 accurate, everything's good. Right? Same day.

18 Let's look at the \$8 million. There's something
19 really, really suspicious about this too, in addition to the
20 fact that he's putting it into the company. It was actually a
21 round-trip transaction. He sends \$3 million first to Rima
22 Jameel and then Rima Jameel sends it back to KITDigital. Then
23 he sends \$5 million, same thing. Let's look at how that money
24 traveled. It traveled in one big circle. He sends money from
25 KITCapital in New York all the way to Dubai, right? 6,800

HcmWtuz3

Rebuttal - Mr. Williams

1 miles and then 6,800 miles back, Rima Jameel sends it right
2 back to New York. You might be asking yourself, Self, how far
3 is it between the KITCapital account in New York and the
4 KITDigital account in New York? It's 12 blocks. The man could
5 have walked 12 blocks. Why send money 13,000 miles around the
6 world when you could have walked 12 blocks to take it from one
7 account to another account? You've got to ask yourself, Who
8 does that? Obviously someone who is committing a fraud. 12
9 short blocks, to be clear.

10 And remember, Joe Mullin, the head of the audit
11 committee, was out there hunting for this cash. Remember, he
12 went all the way to Dubai to meet with Rima Jameel and Tuzman
13 to tell them, I want the escrow account money back in the U.S.,
14 and Tuzman at the same time he's wiring this money all around
15 the world, told Joe Mullin: Joe, it's all good. The money is
16 there. There are no issues.

17 The man is simultaneously lying to Joe Mullin and
18 sending money in one big circle. It doesn't make any sense.
19 And by the way, he's telling Robin Smyth, "That 8 million has
20 me fending for my life." Those are serious words, fending for
21 your life. How many things would have you fending for your
22 life? Right? And how many things that you don't even know
23 about would have you fending for your life? It doesn't make
24 any sense.

25 When you go back to the jury room, you can start with

HcmWtuz3

Rebuttal - Mr. Williams

1 Count Six, check guilty and move on.

2 Let's talk about Count Five. This is the conspiracy
3 with Maiden, the wire fraud conspiracy. Now, there are only a
4 couple of key questions you have to answer about this. This is
5 the count where Kaleil is causing KITDigital to send money to
6 Maiden Capital without actually telling KITDigital and the
7 shareholders the truth about what's going on.

8 Mr. McRae told you that there's nothing wrong with
9 this money going from KITDigital to Maiden Capital, that
10 everyone knew the truth. The evidence actually disagrees with
11 that, so let's look at the first transaction: March 10, 2009,
12 \$200,000. The timing of this is critical because March 10 is
13 only a couple days after Maiden learns that he's got a big hole
14 in the company because there's nothing there in Enable, and
15 Kaleil agrees to send \$200,000 of KITDigital money into Maiden
16 Capital because Maiden was desperate for cash. Right?
17 Desperate for cash, on life support.

18 Now, you have a CEO of a public company, knowing that
19 Maiden is desperate for cash and in trouble and he decides to
20 send his shareholders' money into Maiden Capital, into that
21 fire. Who would do that? Someone who desperately needs Maiden
22 Capital to survive. Remember, they had just signed the market
23 manipulation agreement a few months before. Maiden couldn't go
24 under, that would be a problem, so he puts his investors' money
25 at risk to help himself.

HcmWtuz3

Rebuttal - Mr. Williams

1 Remember, Michael Halkias, the auditor, started asking
2 questions: Who is Maiden? Why are you sending \$200,000 to
3 him? Do you have any secret relationships or agreements with
4 him we should know about? Is there a quid pro quo going on
5 here?

6 Now, you all know why Halkias was concerned. He told
7 you. He said:

8 "A. My concern was that there was a possibility that the
9 investment was made in Maiden with the explicit understanding
10 that Maiden would in return invest in KIT." He had an
11 obligation at that point, the defendant did, to tell the truth
12 to Halkias. He had an obligation, right? He could have said:
13 Halkias, it's OK; if you're concerned, let me show you my
14 market manipulation agreement that I just signed with Maiden;
15 take a look at it; ask me any questions about it.

16 He could have said: Oh, by the way, Maiden also just
17 suffered this big issue with Enable; he's got a big hole in his
18 company because of this thing Enable with Omar Amanat. He
19 could have said that. He could have told the truth. He had to
20 tell the truth. That was his obligation.

21 What did he do instead? He lied, and by the way, not
22 only did he lie, he didn't tell Halkias that on the very same
23 day that Halkias is asking questions, he was sending more of
24 his own personal money into Maiden Capital. Right? If Halkias
25 is concerned about a relationship between the CEO and Maiden,

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Rebuttal - Mr. Williams

1 you would have thought that on the very same day that Halkias
2 is asking these questions, he would have told him about that.
3 Right? You can't forget something like that.

4 Now, look, Mr. McRae focused on this exhibit in his
5 closing, and he said, Well, you know he told the truth because
6 he told Halkias it's KITDigital. KITDigital has never had any
7 understandings or agreements with Maiden or Maiden Capital.
8 Mr. McRae says, If you look at the market manipulation
9 agreement, it actually says KITCapital, not KITDigital. It
10 says KITCapital. Right? Come on. He is KITCapital, he is
11 KITDigital. You know that. You know that.

12 Then look at the next sentence -- actually, two
13 sentences later; it's still a lie: "No one at KITDigital or
14 anyone associated with KITDigital has any suasion of any kind
15 over Maiden Capital's investments." Last time I checked, he's
16 still the CEO of KITDigital, he's got this agreement with
17 Maiden that's secret. That's still a lie. You can convict him
18 based on the fact that he knows that he can't tell the truth to
19 Halkias. That's his consciousness of guilt.

20 Now let's talk about another investment, the last
21 investment KITDigital made with Maiden. Remember, Kaleil
22 Tuzman wanted his \$250,000 personal money out of Maiden
23 Capital, but Maiden didn't have it. He was broke. He couldn't
24 pay him back. So what did he do? He kicked in KITDigital's
25 own shareholder money so he could have his money kicked out.

HcmWtuz3

Rebuttal - Mr. Williams

1 Maiden testified about this.

2 You have to think about it in your own personal life.
3 Imagine you went to the bank, your own bank. You put your ATM
4 card in and ask for a hundred bucks. The ATM says, We don't
5 have any money today. Sorry. We ran out of cash.

6 Damn, that's terrible. Then you go to your best
7 friend, and you say: Hey, I got a bank that's really safe.
8 Why don't you open up an account with the bank, put in a
9 hundred bucks. Right, that's a good start. Your friend does
10 it, believing you, right? And you go back to the ATM, pop in
11 your card, you get your hundred bucks out, that's basically
12 like you getting your friend's money and putting it into your
13 own pocket, and that's exactly what Kaleil did. Mr. McRae told
14 you that's responsible behavior. It's not, it's offensive.

15 Look what Kaleil told Robin Smyth, "Made \$250,000
16 investment," and then he goes on to say, "Maiden Capital is
17 performing well also." That's a lie. That's what half this
18 trial's been about. Come on.

19 Now, look, you can focus on the way that he described
20 the issues at Maiden Capital once he was kicked out of the
21 company. This is June of 2012. KITDigital's asking Maiden for
22 its money back, all that money that they thought was safe.
23 Maiden didn't have it, right? Look what Tuzman wrote,
24 including to Wayne Walker and Joe Mullin: "I think this is a
25 solvable situation, but it requires knowing the full context

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Rebuttal - Mr. Williams

1 and understanding the 'bullets' that a guy like Maiden feels if
2 cornered." Bullets. Who talks like that? You know exactly
3 what bullets he was referring to. That's all the testimony
4 Maiden was telling you about, all the fraud they were doing.

5 All right. Let's move on to the market manipulation
6 conspiracy. I'm going to have to move pretty quickly through
7 this one. It's actually not that difficult because they
8 actually signed an agreement. They've been charged with
9 conspiracy and they literally signed a agreement, so you only
10 need to decide whether Stephen Maiden actually tried to
11 manipulate the KITDigital stock, and most of the defense
12 arguments on this have been, Oh, well, maybe he was
13 manipulating a whole bunch of other stocks. That's irrelevant.

14 Actually, if anything, it goes to show why they're
15 guilty. If you're a bank robber and you want to team up with
16 some bank robbers to do a robbery, who do you go to? You go to
17 a bank robber, right? That's who you team up with. If you're
18 trying to manipulate a stock, who do you team up with? You
19 team up with a stock manipulator. It makes sense. You think
20 it's an accident that these two men joined up with Stephen
21 Maiden? No. It makes perfect sense. That's exactly who you
22 go to if you want to commit this kind of crime.

23 And remember, not a single witness told you that they
24 have ever seen a CEO of a public company pay an investor to buy
25 the stock. You'd better know someone, if you want to do that,

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Rebuttal - Mr. Williams

1 who's going to go along with it -- right -- as opposed to
2 blowing the whistle. You'd better make sure that the person is
3 the exact kind of person who would commit that kind of crime
4 with you. They went to Steve Maiden because it made sense.

5 Now, they also made these arguments that somehow the
6 stock wasn't manipulated because it didn't shoot up like a
7 rocket ship. They called Professor Ferrell to talk about how
8 the stock didn't shoot up. That is not what this case has been
9 about. Maiden told you it was about supporting the stock,
10 keeping it up.

11 This is Omar Amanat: "Singlehandedly kept the stock
12 up." He's talking about Maiden, keeping it up as opposed to
13 dropping. Maiden told you the stock was heavy; it was heavy
14 without being supported. Look at how Maiden describes it.
15 Tuzman has written to him: "Where is my stock trading?
16 Getting nervous notes." Maiden says, "It's dropping because I
17 was on a plane on way to Vegas. This thing is heavy every day
18 unless I support it. Sucks." It's heavy unless I support it.
19 He gets on a plane, folks, he steps away from his desk and the
20 thing starts to fall.

21 Maiden's talking about the KIT stock, he calls it the
22 Hindenburg, the famous German blimp that catches fire and falls
23 out of the sky. He didn't talk about a rocket ship, he talked
24 about a burning blimp.

25 Finally, the defense made arguments about how the

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Rebuttal - Mr. Williams

1 conspiracy ended because Maiden somehow, the conspiracy ended
2 because they dropped out of the conspiracy and Maiden was doing
3 this on his own. Not a single person dropped out of this
4 conspiracy. They met in New York in 2011 to save Maiden
5 Capital. Omar Amanat was still sending text messages to Maiden
6 talking about "remind Kaleil that you supported his stock."
7 Maiden is still doing wash trades and all sorts of things that
8 don't make any sense with the stock unless you're trying to
9 manipulate it. Reject that argument.

10 I want to turn to Counts One through Three. This is
11 the Maiden Capital fraud. Look, Mr. Jackson spent a lot of
12 time focusing on all the things that are complicated in this
13 case. I want to simplify it for you. There's a simple
14 principle. If you're an investor, you have the right to know
15 the truth. Period, full stop. Nothing complicated about that.
16 If part of your investment has been lost because of the Enable
17 hole, you have the right to know the truth. There were only a
18 handful of people in the entire world who knew the truth about
19 the health of Maiden Capital. One of them was Omar Amanat.
20 One of them was Steve Maiden. None of them were Maiden Capital
21 investors, the people who had the right to know what was really
22 going on.

23 Mr. Jackson said, Oh, it's so complicated, ignoring
24 again the text messages where his client is not talking about
25 complicated, "criminal behavior," "jail time," "fund needs to

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Rebuttal - Mr. Williams

1 be made whole or ship will sink." Look, he also talked about
2 how believing that the Enable hole had some sort of value
3 somehow made it OK. Right? Made Maiden Capital actually not
4 problematic.

5 Hopes and beliefs, if those things had value, if that
6 was worth money, then we'd all be rich. We'd all be rich and
7 you could trade your hopes and dreams for someone's money. If
8 you go to the bank and you want to get your money out, but they
9 say: We don't have it today, but we hope and believe and dream
10 that one day it's all going to come back; here's a promissory
11 note.

12 I don't want a promissory note. I want cash. The
13 promissory note idea doesn't make any sense. At the end of the
14 day, Omar Amanat knew exactly what they were doing, and
15 Mr. Jackson spent a lot of time addressing a lot of arguments,
16 but one thing we have proven to you is that Omar Amanat
17 actually took over Maiden Capital. Remember, he installed his
18 wife as the head of Maiden Capital. If Omar Amanat is some
19 disinterested dude who didn't know what was going on, he
20 literally owned Maiden Capital. If he wanted to disclose
21 something to the investors, he could tell them, Oh, hey,
22 there's this Enable thing you should be aware of -- he was the
23 owner -- he could have done it. There's no evidence in the
24 case that he told anyone the truth. You think Omar Amanat
25 couldn't just pick up the phone and say something to the

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Rebuttal - Mr. Williams

1 investors? Right?

2 Listen carefully to the instructions. There is
3 nothing that would make it OK for Maiden to keep this secret
4 from his investors. Investors have to know the truth.

5 Also, Mr. Jackson spent a lot of time telling you that
6 Enable had money, Enable was valuable, promissory notes, and
7 that Maiden was the only substantive witness you heard from.

8 You also heard from Robin Smyth. Actually, before we
9 get there, he made this argument about no evidence of
10 interstate wires. Look, all these wires from Omar Amanat and
11 Enable over to Maiden Capital, California to North Carolina.
12 Last time I checked, California and North Carolina are not the
13 same state.

14 This is all in the record. Mr. Jackson made a big
15 deal about this. He also said no wires coming into New York.
16 Look, wires to Maiden Capital, KITDigital to Maiden Capital and
17 Maiden Capital into KITCapital, New York, New York. Last time
18 I checked, that's right here. It's a ridiculous argument. But
19 he also said that there was only one substantive witness who
20 testified against his client. Remember, Robin Smyth pled
21 guilty to misrepresenting that Enable had money. Right? And
22 this is a note from his notebook. He told you he considered
23 round tripping KITDigital money to Enable to pay off the money
24 that Enable supposedly had for KITDigital. You know if Robin
25 Smyth wrote it down in his notebook as something to round trip,

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Rebuttal - Mr. Williams

1 it's probably fake. You can reject the argument that somehow
2 Enable had value. It's ridiculous.

3 I want to touch a little bit on the fake evidence that
4 Omar Amanat put in this trial. Let's just talk about that for
5 a minute. It's a window into his guilty mind, that in order to
6 get out of this mess, he actually decided to put fake evidence
7 right in front of you. And Mr. Jackson started his opening
8 statement in this case with his story about the big bronze
9 statue across the street. The scales of justice, right,
10 wearing a blindfold. He said there are no roulette tables
11 there, and he's right. You don't take gambles here, and he's
12 right. But Omar Amanat decided to come into this courtroom and
13 take a massive bet. Right? To put a whole bag of fake
14 evidence on the scales of justice to tip it in his favor so
15 that you could take it back into the jury room and look at it
16 and acquit someone who should be convicted. He took that
17 gamble and he lost. He gambled that just because justice wears
18 a blindfold, justice is blind to the truth, that all of us are
19 blind to the truth. It's ridiculous, he got caught in the
20 middle of this trial.

21 Mr. Jackson said, Oh, there are all these reasons why
22 it reflects reality and whatnot. Omar Amanat created emails
23 that would look like they were real. That's the whole point,
24 right? That's the whole point. He even talked about there's
25 evidence in the record. Mr. Jackson talked about Irfan Amanat

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Rebuttal - Mr. Williams

1 in his opening statement. He said that Irfan Amanat, the
2 defendant's brother, was a technical genius. Remember, this is
3 the same Irfan Amanat who Omar was talking to about deleting
4 all the emails from Yahoo, right? Pulling them down on to his
5 computer. That was the whole thing.

6 This is Tuzman: "My understanding is that Irfan
7 fabricated and forged documents." Come on. Omar Amanat
8 introduced fake evidence into this record. It's offensive.
9 It's offensive. Mr. Jackson's main point was that Agent
10 DeCapua couldn't really tell you everything you needed to do.
11 He was an expert. He was agent of the year at the FBI, and he
12 told you what your common sense already knows. You can't send
13 emails from the future. Email from 2087? Literally an email
14 from 2087, and he's saying it's real. It doesn't make any
15 sense. And there wasn't just one, there wasn't just two, there
16 wasn't just three. There were four fake emails. The whole
17 thing is ridiculous, and he's trying to say, Oh, there was a
18 gap in Maiden's computer. There was a gap in Maiden's computer
19 of three months. You all know what happened: that gap did not
20 contain those four emails. The time period of that gap is
21 before those four emails. It's a ridiculous proposition.

22 Emails like this just don't magically appear out of
23 nowhere in the middle of a trial. Gifts don't come like that.
24 You think with all these documents that you've seen that no one
25 would have seen these until Maiden had finished his

HcmWtuz3

Rebuttal - Mr. Williams

1 cross-examination and then they, *voila*, magically appear? Four
2 of them?

3 You don't need to call Blackberry and ask them whether
4 it's possible to send emails from the future. Can you imagine
5 that phone call?

6 This is Agent DeCapua from the FBI. I just want to
7 ask you a couple questions. Ma'am, is it possible to send an
8 email from 2087?

9 Is it possible? What? Are you from the FBI? What is
10 happening with our country's law enforcement, asking these dumb
11 questions?

12 2087, folks, and yet he's trying to tell you that
13 these emails are real. You don't have to call anyone. That's
14 an embarrassing phone call. You don't pick up the phone to say
15 foolishness like that.

16 And remember, Mr. Jackson said, Well, Maiden looked at
17 these emails. When he cross-examined him, he said, You
18 recognize them, right? You remember when Mr. Jackson started
19 his cross-examination. What were some of his first questions?
20 Mr. Maiden, Mr. Maiden, I'm a ferocious cross-examiner. Who
21 played me in your press, right? Ferocious. He had him on a
22 choke collar, right? Every time Maiden departed, pulled him
23 back. You think that Maiden was going to be able to say, Oh,
24 actually, Mr. Jackson, let's have a discussion about potential
25 fabrication of documents in this case. No, no. Come on.

HcmWtuz3

Rebuttal - Mr. Williams

1 Now, look, I want to address a couple of other things
2 about what Mr. Jackson said. If he actually believed, if his
3 client truly believed that Maiden Capital had value, then why
4 was he sending \$700,000 of money into Maiden Capital. If you
5 think that the place is fine, why are you dumping your own
6 money into it? It doesn't make any sense. 700 grand is a lot
7 of money. Right? You don't send that in for free. You send
8 that in for free. You send it in because Steve Maiden is
9 telling you: Dude, we have to cover this up; if people find
10 out it's true, we're going to end up caught; we're going to end
11 up right here; I'm going to be in a jumpsuit.

12 And Omar Amanat ultimately agrees. That "criminal
13 behavior" "jail time" text message was after all the things
14 that Mr. Jackson was talking about, the promissory note and
15 this and that. Those were earlier. "Criminal behavior" "jail
16 time" is later. Omar Amanat agreed: I don't want to go to
17 jail; be aggressive today; let's work this out.

18 And remember, they show up at that New York meeting,
19 by the way, you didn't hear anything about this in the
20 arguments you heard yesterday and today. Remember, we
21 presented evidence on this, they show up at the meeting in New
22 York to save Maiden Capital, and what did they do? The first
23 thing that happens -- well, actually, the second thing that
24 happens after Omar sends the text message about "criminal
25 behavior" "jail time" is that they all get patted down.

HcmWtuz3

Rebuttal - Mr. Williams

1 Mr. Jackson says business dispute. You've all been in
2 meetings. How many meetings have you walked into and the first
3 thing that happens is someone pats you down? Right? Recording
4 devices, and they confiscate your phones. If you don't know
5 there's something wrong's going on: Dude, why are you patting
6 me down? Why are you touching me? Why are you taking my
7 phone? Why are you worrying about recording devices? Why am I
8 getting this "criminal behavior" "jail time" text message? I
9 got to go. I got to go.

10 Omar Amanat stayed. That tells you everything you
11 need to know about whether he knew that this whole thing was a
12 fraud. It just doesn't make any sense. Doesn't make any
13 sense.

14 Look, at the end of the day, when you consider all the
15 evidence that we presented to you, we could spend hours and
16 hours and hours reminding you of everything you've seen. We
17 don't need to do that. The government proved its case. Common
18 sense tells you that when someone says "criminal behavior"
19 "jail time," they mean criminal behavior and jail time. The
20 opposite would be the Upside Down, as Mr. Jackson liked to say.
21 The opposite would be the Upside Down.

22 Mr. McRae said, When someone reveals themselves you
23 believe them the first time. I'm butchering the Maya Angelou
24 quote, but that's what it is. When someone tells you what
25 they're thinking at the time, believe them. Don't complicate

HcmWtuz3

Rebuttal - Mr. Williams

1 it. It's very simple. When you're thinking about the
2 accounting fraud, does money move from point A to point B?
3 Yes, that's how money moves. Does it go in a circle? No.
4 It's not complicated.

5 These lawyers are excellent at their work. They're
6 excellent at their craft. They are good. I respect them.
7 They're doing their jobs, to test the government's case, but we
8 have done our jobs too. We have presented you with evidence
9 beyond a reasonable doubt that both these defendants are
10 guilty, guilty, guilty as charged. You don't have to
11 complicate it. We don't have to think about things that could
12 speculatively happen some way in 2087. What if the email
13 actually came in from 2087? Don't go there. It makes your
14 head hurt.

15 The evidence in this case is straightforward and
16 simple and it's overwhelming. Kaleil Isaza Tuzman and Omar
17 Amanat are guilty as charged. Period.

18 Thank you.

19 THE COURT: Ladies and gentlemen, the jury
20 instructions are going to take about an hour and a half for me
21 to read to you. Does anyone need a break before we get
22 started? If you do need a break, we'll take one.

23 I see some of you nodding. We'll take a brief recess
24 and then you'll come back and I'll give you the instructions.

25 (Jury not present)

HcmWtuz3

1 THE COURT: Please be seated.

2 MR. JACKSON: Your Honor, I just want to note a couple
3 of objections.

4 THE COURT: Yes, go ahead.

5 MR. JACKSON: There was a portion during Mr. Williams'
6 rebuttal summation where he cited Agent DeCapua's status as
7 agent of the year, etc.

8 THE COURT: Yes.

9 MR. JACKSON: We think that was improper bolstering.

10 THE COURT: It's on his résumé, sir. It's in
11 evidence.

12 MR. JACKSON: OK, your Honor. Just noting the
13 objection.

14 There was also some argument at the end of
15 Mr. Williams' rebuttal summation where he's talking about
16 meetings in 2011 and he argued that on the basis of being in
17 two places, New York, Omar Amanat knew this whole thing is a
18 fraud. Your Honor, we submit that the way that that was argued
19 conflated the counts in terms of what's going on, and suggested
20 that Mr. Amanat was potentially a participant in some of the
21 activity with which he's not charged, so we're just noting the
22 objection.

23 (Continued on next page)

24

25

HCMTTUZ4

1 THE COURT: Anything you want to say about that,
2 Mr. Williams?

3 MR. WILLIAMS: No, your Honor.

4 THE COURT: Everyone ready?

5 Mr. Weitzman?

6 MR. WEITZMAN: I also had something to note. As I
7 noted before the rebuttal, I thought it would be improper for
8 the government to get into new areas on rebuttal. I think they
9 did do that in one at least one very significant respect, which
10 was the Smyth notebooks. They did not mention the Smyth
11 notebooks, not one word in their summation. We did not
12 respond. We did not mention the Smyth notebooks in our
13 defense.

14 THE COURT: You attacked sometime's credibility.

15 MR. WEITZMAN: I agree, your Honor.

16 THE COURT: And they are entitled to respond to the
17 attacks that Mr. McRae made on Smyth's credibility by saying
18 among other things, there were these entries in his notebooks.

19 MR. WEITZMAN: I understand the point, your Honor, I
20 would like to preserve the objection. I would like to point
21 out one of the things Mr. Williams said is they didn't mention
22 the notebooks in their defense summation. We didn't have --
23 first, we didn't have an obligation to; second, because they
24 didn't elicit, they didn't make any argument about the
25 notebooks, it was proper for us not to mention them. This is

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Charge

1 the issue --

2 THE COURT: Sorry, because they didn't say anything
3 about the notebooks it would have been improper for you to
4 mention them?

5 MR. WEITZMAN: No, it was fine for us not to mention
6 them because they didn't marshal that evidence in their
7 summation is my point. They left it for the rebuttal so we
8 wouldn't have an opportunity to respond to it.

9 THE COURT: It was completely foreseeable that they
10 would say something about the notebook entries, so your
11 objection is overruled.

12 Anything else before I bring in the jury?

13 MR. WEITZMAN: Could we take a two-minute break, your
14 Honor?

15 THE COURT: Yes, we'll take a two-minute recess.

16 (Recess taken)

17 (Jury present)

18 THE COURT: Ladies and gentlemen, I will now instruct
19 you as to the law that governs this case.

20 I asked Mr. Ruocco to place a copy of the instructions
21 on each of your chairs. You should feel free to read along
22 with me or you can just listen to me, whichever you prefer. I
23 do want you to know that you will be able to take your copy of
24 the instructions into the jury room, and you will be able to
25 consult with the instructions during your deliberations.

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Charge

1 There are three parts to the instructions. First, I
2 will give you general instructions about your role and how you
3 are to decide the facts of the case, that is, what happened;
4 second, I will give you instructions as to the specific charges
5 in this case; third, I will give you some final instructions
6 about procedure.

7 It is important that you listen carefully. I am
8 reading these instructions from a prepared text because the law
9 is made up of words that are very carefully chosen. This is
10 not a time to ad lib. When I tell you what the law is, it's
11 critical that I use exactly the right words.

12 My duty at this point is to instruct you as to the
13 law. It is your duty to accept these instructions of the law
14 and apply them to facts as you determine them. With respect to
15 legal matters, you must take the law as I give it to you. If
16 any lawyer has stated a legal principle different from any that
17 I state to you in my instructions, it is my instructions that
18 you must follow.

19 You are to consider these instructions together as a
20 whole; in other words, you're not to isolate or give undue
21 weight to any particular instruction. You must not substitute
22 your own notions or opinions of what the law is or what it
23 ought to be.

24 As members of the jury, you are the sole and exclusive
25 judges of the facts. You decide what happened. It is your

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1 sworn duty to determine the facts based solely on the evidence
2 received in the trial. Any opinion I might have regarding the
3 facts is of absolutely no consequence.

4 The personalities and the conduct of counsel in the
5 courtroom are not in any way at issue. If you formed an
6 opinion of any kind as to any of the lawyers in the case,
7 favorable or unfavorable, whether you approved or disapproved
8 of their behavior as advocates, that should not enter into your
9 deliberations at all.

10 The lawyers and I have had sidebar conferences and
11 other conferences out of your hearing. These conferences
12 involved procedural and evidentiary matters and should not
13 enter into your deliberations at all.

14 A lawyer has a duty to object when the other side
15 offers testimony or other evidence that the lawyer believes is
16 not admissible. It is my job to rule on those objections. Why
17 an objection was made or how I ruled on it is not your concern.
18 You should not draw any inference simply from the fact that a
19 lawyer objects to a question or that I sustained or overruled
20 an objection.

21 You must evaluate the evidence calmly and objectively,
22 without prejudice or sympathy. You must be completely fair and
23 impartial. Your verdict must be based solely on the evidence
24 developed at this trial, or the lack of evidence. Our system
25 of justice cannot work unless you reach your verdict through a

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Charge

1 fair and impartial consideration of the evidence. Under your
2 oath as jurors, you're not to be swayed by sympathy or
3 prejudice. You are to be guided solely by the evidence in this
4 case. And the crucial bottom line question that you must ask
5 yourselves as you sift through the evidence is: Has the
6 government proven each element of the charges beyond a
7 reasonable doubt?

8 It is for you alone to decide whether the government
9 has proven that the defendant you are considering is guilty of
10 the crimes charged, and you are to do so solely on the basis of
11 the evidence and subject to the law as I explain it to you. If
12 you let fear or prejudice or bias or sympathy interfere with
13 your thinking, there is a risk that you will not arrive at a
14 true and just verdict.

15 If you have a reasonable doubt as to a defendant's
16 guilt, you should not hesitate for any reason to reach a
17 verdict of not guilty. But on the other hand, if you should
18 find that the government has met its burden of proving beyond a
19 reasonable doubt that a defendant is guilty, you should not
20 hesitate because of sympathy or any other reason to reach a
21 verdict of guilty.

22 The question of possible punishment must not enter
23 into or influence your deliberations in any way. The duty of
24 imposing a sentence rests exclusively upon me. Your function
25 is to weigh the evidence in the case and to determine whether

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Charge

1 or not a defendant has been proven guilty beyond a reasonable
2 doubt solely on the basis of such evidence or lack of evidence.

3 Under your oath as jurors, you cannot allow a
4 consideration of the punishment that may be imposed on a
5 defendant, in the event of a finding of guilt, to influence
6 your verdict in any way or in any sense to enter into your
7 deliberations. Similarly, you cannot permit any feelings you
8 might have about the nature of the crimes charged to interfere
9 with your decision-making process. Your verdict must be based
10 exclusively upon the evidence or the lack of evidence in this
11 case.

12 In reaching your verdict, you must remember that all
13 parties stand equal before a jury in the courts of the United
14 States. The fact that the government is a party and that the
15 prosecution is brought in the name of the United States does
16 not entitle the government or its witnesses to any greater
17 consideration than that accorded to any other party. By the
18 same token, you must give it no less consideration.

19 In reaching your decision as to whether the government
20 sustained its burden of proof, you may not consider any
21 personal feelings you may have about either defendant's race,
22 religion, ethnicity, national origin, sex or age. All persons
23 are entitled to the same presumption of innocence.

24 Mr. Tuzman and Mr. Amanat have each pleaded not
25 guilty. In doing so, each defendant has denied the charges in

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Charge

1 the indictment. As a result, the government has the burden of
2 proving the charges against them beyond a reasonable doubt.
3 This burden of proof never shifts to a defendant for the simple
4 reason that the law never imposes upon a defendant in a
5 criminal case the burden or duty of testifying, of calling any
6 witness, or of locating or producing any evidence.

7 A defendant does not have to prove his innocence. To
8 the contrary, a defendant is presumed innocent until such time,
9 if ever, that you as a jury are satisfied that the government
10 has proven him guilty beyond a reasonable doubt.

11 Mr. Tuzman and Mr. Amanat began the trial here with a
12 clean slate. This presumption of innocence alone is sufficient
13 to acquit a defendant unless you as jurors are unanimously
14 convinced beyond a reasonable doubt of his guilt after a
15 careful and impartial consideration of all the evidence. If
16 the government fails to sustain its burden as to a particular
17 defendant, you must find that defendant not guilty.

18 I will now address reasonable doubt. What is
19 reasonable doubt? It is a doubt founded in reason, as opposed
20 to a doubt based on speculation, emotion, sympathy, or
21 prejudice. It is a doubt that arises out of the evidence in
22 the case or the lack of evidence. It is a doubt that a
23 reasonable person has after carefully weighing all the
24 evidence. Reasonable doubt is a doubt that arises from your
25 own judgment, life experience, and common sense when applied to

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Charge

1 the evidence.

2 If, after a fair and impartial consideration of all
3 the evidence, you are not satisfied of the guilt of a
4 particular defendant, that is, if you do not have an abiding
5 conviction of his guilt, you must find him not guilty. In
6 other words, if you have such a doubt as would cause you, as a
7 prudent person, to hesitate before acting in matters of
8 importance to yourself, then you have a reasonable doubt, and
9 it is your duty to find that defendant not guilty.

10 On the other hand, if, after a fair and impartial
11 consideration of all the evidence you do have an abiding
12 conviction of a defendant's guilt, in other words, a conviction
13 you would be willing to act upon without hesitation in
14 important matters in your own life, then you have no reasonable
15 doubt, and it is your duty to convict that defendant.

16 Reasonable doubt is not whim or speculation. It is
17 not an excuse to avoid the performance of an unpleasant duty.
18 Reasonable doubt also does not mean beyond all possible doubt.
19 It is practically impossible for a person to be absolutely and
20 completely convinced of any disputed fact that by its nature is
21 not susceptible to mathematical certainty. As a result, the
22 law in a criminal case is that it is sufficient for the
23 government to establish the guilt of a defendant beyond a
24 reasonable doubt, not all possible doubt.

25 In determining the facts you must rely on your own

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Charge

1 recollection of the evidence. The evidence in this case is the
2 testimony of the witnesses, the exhibits received in evidence,
3 and the stipulations or agreements as to certain facts entered
4 into by the parties. When I sustained an objection to a
5 question, the answer that the witness may have given in
6 response to that question is not part of the record in this
7 case and may not be considered by you. You are likewise not to
8 consider a lawyer's questions as evidence. It is the witness's
9 answers that are evidence, not the questions.

10 When I ordered that testimony be stricken from the
11 record, you may not consider that testimony during your
12 deliberations.

13 From time to time I received certain evidence for a
14 limited purpose, for example, as proof of a defendant's stated
15 of mind. Where evidence was admitted for a limited purpose,
16 you must follow the limiting instructions I have given and use
17 the evidence only for the purpose I indicated.

18 The only exhibits that are evidence in this case are
19 those that were received in evidence. Exhibits marked for
20 identification but not admitted are not evidence, nor are
21 materials that were used only to refresh a witness's
22 recollection.

23 Witnesses sometimes have a failure of recollection
24 when testifying. In such circumstances, it is proper for the
25 lawyer questioning the witness to attempt to refresh his or her

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Charge

1 recollection. Anything can be used to refresh a witness's
2 recollection. Where a document is used, that document does not
3 have to have been prepared by the witness, made
4 contemporaneously with the events described in it, or be
5 admissible. Where a witness states that a writing has
6 refreshed the witness's memory, then the witness may proceed to
7 testify as to the matters on which his or her memory was
8 refreshed. That testimony is evidence. However, where a
9 witness states that his recollection is not refreshed, any
10 statements a lawyer may have made about the document used in
11 the attempt to refresh the witness's recollection are not
12 evidence.

13 As I told you at the outset of the case, arguments by
14 lawyers are likewise not evidence, because the lawyers are not
15 witnesses. What they have said to you in their opening
16 statements and in their closing arguments is intended to help
17 you understand the evidence to reach your verdict. However,
18 where your recollection of the evidence differs from what a
19 lawyer has argued, it is your recollection of the evidence that
20 controls. You must determine the facts based solely on the
21 evidence received at this trial. In determining the facts, you
22 must rely upon your own recollection of the evidence. What the
23 lawyers said in opening statements, in closing arguments, in
24 objections or in questions is not evidence.

25 I remind you also that nothing I have said during the

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Charge

1 trial or will say during these instructions is evidence.

2 Similarly, the rulings I have made during the trial are not any
3 indication of my views of what your decision should be.

4 It is for you alone to decide the weight, if any, to
5 be given to the testimony you have heard and the exhibits you
6 have seen.

7 Generally, there are two types of evidence that you
8 may consider in reaching your verdict, direct evidence and
9 circumstantial evidence.

10 Direct evidence is testimony by a witness about
11 something he or she knows by virtue of his or her own senses,
12 something seen, felt, touched or heard. For example, if a
13 witness testified when he left his house this morning it was
14 raining, that would be direct evidence about the weather.
15 Direct evidence may also be in the form of an exhibit.

16 Circumstantial evidence is evidence from which you may
17 infer the existence of certain facts. For example, assume that
18 when you came into the courthouse this morning the sun was
19 shining and it was a nice day. Assume that the courtroom
20 blinds were drawn and you could not look outside. As you were
21 sitting here, someone walks in with an umbrella which is
22 dripping wet. A few minutes later, another person enters with
23 a wet raincoat. Now you can't look outside the courtroom and
24 you can't see whether or not it's raining, you have to no
25 direct evidence of that fact. But, on the combination of facts

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Charge

1 that I have asked you to assume, you could conclude that it had
2 been raining. That's all there is to circumstantial evidence.
3 On the basis of reason, life is experience and common sense,
4 you infer from one established fact the existence or
5 non-existence of some other fact.

6 The matter of drawing inferences from facts in
7 evidence is not a matter of guesswork or speculation. An
8 inference is a logical, factual conclusion that you might
9 reasonably draw from other facts that have been proven. Many
10 material facts, such as what a person was thinking or
11 intending, are rarely easily proven by direct evidence. Often
12 such facts are established by circumstantial evidence.

13 Circumstantial evidence may be given as much weight as
14 direct evidence. The law makes no distinction between direct
15 and circumstantial evidence, but simply requires before
16 convicting a defendant the jury must be satisfied of the
17 defendant's guilt beyond a reasonable doubt based on all the
18 evidence in the case, circumstantial and direct.

19 There are times when different inferences may be drawn
20 from the evidence. The government may ask you to draw one set
21 of inferences while the defendant asks to you draw another. It
22 is for you, and for you alone, to decide what inferences you
23 will draw.

24 What is important here is the quality and the
25 persuasiveness of the evidence relied on by a party and not the

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Charge

1 number of witnesses, the number or variety of the exhibits that
2 party introduced, or the length of time that party spent on a
3 particular subject.

4 As I stated, you should draw no inference or
5 conclusion for or against either side based on a lawyer's
6 objection or my ruling on the objection. A lawyer has an
7 obligation to object when he or she believes that evidence is
8 not properly admitted under the rules of evidence. You should
9 likewise draw no inference or conclusion of any kind, whether
10 favorable or unfavorable, with respect to any witness or party
11 in the case by reason of any question I posed to a witness.

12 There is no legal requirement that the government
13 prove its case through any particular means. You are not to
14 speculate as to why the government used the techniques it did
15 or why it did not use other techniques. Law enforcement
16 techniques are not your concern. Your concern is to determine
17 whether or not, based on the evidence or lack of evidence, a
18 defendant's guilt has been proven beyond a reasonable doubt.

19 You should evaluate the credibility, believability,
20 and reliability of the witnesses by using your common sense.
21 Common sense is your greatest asset as a juror. Ask yourself
22 whether the witness appeared honest, open, candid, and
23 reliable. Did the witness appear evasive or as though he or
24 she was trying to hide something? How responsive was the
25 witness to the questions asked on direct examination in

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Charge

1 comparison to the questions posed on cross-examination? You
2 should also consider the witness' ability to recollect past
3 events.

4 If you find that any witness has lied under oath at
5 this trial, you should view the testimony of that witness
6 cautiously and weigh it with great care. It is, however, for
7 you to decide how much of the witness's testimony, if any, you
8 wish to believe. Few people recall every detail of every event
9 precisely the same way. A witness may be inaccurate,
10 contradictory, or even untruthful in some respects and yet
11 entirely believable and truthful in other respects. It is for
12 you to determine whether such inconsistencies are significant
13 or inconsequential and whether to accept or reject all or to
14 accept some and reject the balance of that witness's testimony.

15 In sum, it is up to you to decide whether the
16 testimony of a witness is truthful and accurate, in part, in
17 whole, or not at all, as well as what weight, if any, to give
18 to that witness's testimony.

19 In evaluating the testimony of any witness, you may
20 consider, among other things, the witness's intelligence, the
21 ability and opportunity the witness had to see, hear or know
22 the things that the witness testified about, the witness's
23 memory, any interest, bias or prejudice the witness may have,
24 the manner and demeanor of the witness while testifying, and
25 the reasonableness of the witness's testimony in light of all

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Charge

1 the evidence in the case.

2 The government is not required to prove the essential
3 elements of the offense by any particular number of witnesses.
4 The testimony of a single witness may be sufficient to convince
5 you beyond a reasonable doubt of the existence of the essential
6 elements of the offense you are considering if you believe that
7 the witness has truthfully and accurately related what he or
8 she has told you.

9 You have heard argument that, at some earlier time,
10 witnesses said or did something that is inconsistent with their
11 trial testimony.

12 Evidence of prior inconsistent statements was
13 introduced for the purpose of helping you decide whether to
14 believe a witness's testimony. If you find that a witness made
15 an earlier statement that conflicts with the witness's trial
16 testimony, you may consider that fact in deciding how much of
17 the witness's trial testimony, if any, to believe.

18 In making this determination, you may consider whether
19 the witness intentionally made a false statement or whether it
20 was an innocent mistake, whether the inconsistency concerns an
21 important fact, or whether it had to do with an insignificant
22 detail, whether the witness had an explanation for the
23 inconsistency and whether that explanation accords with your
24 common sense.

25 It is exclusively your duty, based upon all the

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Charge

1 evidence and your own good judgment, to determine whether the
2 prior statement was inconsistent, and if so, how much, if any,
3 weight to give to the inconsistent statement in determining
4 whether to believe all, part of, or none of the witness's
5 testimony.

6 In deciding whether to believe a witness, you should
7 consider whether there is any evidence that the witness is
8 biased in favor or against the government or one or more of the
9 defendants. Likewise, you should consider evidence of any
10 other interest or motive that the witness may have in
11 cooperating with a particular party. You should also take into
12 account evidence of any benefit or compensation that a witness
13 may or has received or hopes to receive from testifying in this
14 case or as a result of the outcome of this case. It is your
15 duty to consider whether any witness has permitted bias or
16 interest to color his or her testimony. If you find that a
17 witness is biased, you should view his or her testimony with
18 caution, weigh it with great care, and subject it to close and
19 searching scrutiny.

20 The mere fact that a witness has an interest in the
21 outcome of this case does not mean, of course, that he or she
22 has not told the truth. It is for you to decide from your own
23 observations, and applying your common sense, life experience
24 and all the other considerations I have mentioned, whether the
25 possible interest of a witness has, intentionally or otherwise,

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Charge

1 colored or distorted his or her testimony. You're not required
2 to disbelieve an interested witness. You may accept as much of
3 his or her testimony as you deem reliable and reject as much as
4 you deem unworthy of acceptance.

5 You have heard testimony from witnesses who have
6 pleaded guilty and entered into cooperation agreements with the
7 government. Several of these witnesses hope that, as a result
8 of their cooperation with the government, including testifying
9 at this trial, they will receive a lesser sentence.

10 You are not to draw any conclusions or inferences of
11 any kind about the guilt of the defendants merely from the fact
12 that certain witnesses at this trial entered into cooperation
13 agreements with the government or pleaded guilty to crimes that
14 may be similar or related to the crimes with which the
15 defendants are charged. Each of the witnesses who decided to
16 plead guilty and cooperate with the government did so based on
17 their evaluation of what was in their best interest. Their
18 decision to plead guilty and to cooperate with the government
19 is not evidence that either defendant committed a crime. A
20 defendant may not be found guilty simply based on his
21 association with individuals who decided to plead guilty and
22 enter into cooperation agreements with the government.

23 You should be aware that it is not unusual for the
24 government to rely on the testimony of witnesses who admit to
25 participating in a criminal activity. The government must take

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Charge

1 its witnesses as it finds them, and frankly the government must
2 use such testimony in criminal prosecutions because otherwise
3 it would be difficult or impossible to detect and prosecute
4 wrongdoers. For this reason, the law allows the use of
5 cooperating witness testimony, and you may consider the
6 testimony of all of these witnesses in determining whether the
7 government has met its burden of proving the defendants' guilt
8 beyond a reasonable doubt.

9 The testimony of cooperating witnesses must, however,
10 be scrutinized with special care and caution. The fact that a
11 witness has pleaded guilty to crimes and has entered into a
12 cooperation agreement with the government may be considered by
13 you as bearing on the witness's credibility. It does not
14 follow, of course, that simply because a person has admitted to
15 committing crimes and has entered into a cooperation agreement
16 with the government that he is incapable of giving a truthful
17 account of what happened. Moreover, it is no concern of yours
18 why the government made an agreement with a witness. Your sole
19 concern is whether a witness has given truthful testimony.

20 The testimony of cooperating witnesses should be given
21 such weight as it deserves in light of all the facts and
22 circumstances before you, taking into account the witness's
23 candor, the strength and accuracy of his recollection, his
24 background, his demeanor, and the extent to which his testimony
25 is or is not corroborated by other evidence in the case. As

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Charge

1 with other witnesses, you may consider whether a cooperating
2 witness has an interest in the outcome of this case, and if so,
3 whether that interest has affected his testimony.

4 In this regard, you should bear in mind that a witness
5 who has pleaded guilty and entered into a cooperation agreement
6 with the government has an interest and motives different from
7 those of any other witness in this case. In evaluating the
8 testimony of such a witness, you should ask yourself whether
9 the witness would benefit more by lying or by telling the
10 truth. Was the witness's testimony influenced in any way by a
11 belief or hope that he would receive favorable treatment by
12 testifying falsely, or did he believe that his interests would
13 be best served by testifying truthfully? If you believe that a
14 witness was motivated by hopes of avoiding a term of
15 imprisonment, was the motivation one that would cause him to
16 lie, or was it one that would cause him to tell the truth?

17 In sum, you should consider all of the evidence in
18 deciding what weight, if any, to give to the testimony of a
19 cooperating witness. If you find that the testimony of a
20 cooperating witness was false, you should reject it. However,
21 if, after a cautious and careful examination of the cooperating
22 witness's testimony, in light of all the evidence, you conclude
23 that the cooperating witness told the truth, you should accept
24 the testimony as credible and act upon it accordingly.

25 As with any witness, let me emphasize the issue of

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Charge

1 credibility need not be decided on an all-or-nothing basis.
2 Even if you find that a witness testified falsely in one part,
3 you may still accept his testimony in other parts, or you may
4 disregard all of that witness' testimony. That is a
5 determination entirely for you, the jury, to make.

6 You have heard testimony from witnesses employed by a
7 law enforcement agency. The fact that a witness is employed by
8 a law enforcement agency does not mean that his or her
9 testimony deserves more or less consideration, or greater or
10 lesser weight, than that of any other witness. It is up to you
11 to decide, after reviewing all the evidence, what weight to
12 give the testimony of law enforcement witnesses.

13 I permitted Professor Allen Ferrell and Agent Joel
14 DeCapua to express opinions about certain matters that are at
15 issue in this case. Those witnesses were permitted to give
16 opinion testimony because they possess specialized knowledge as
17 a result of their education, training, and work experience.

18 In weighing the testimony of those witnesses, you may
19 consider their qualifications, the reasons they gave for their
20 opinions, and the reliability of the information supporting
21 those opinions, as well as all the factors I have previously
22 mentioned for evaluating witness testimony. To the extent you
23 find the opinion testimony of these witnesses credible and
24 reliable, you may rely on it. To the extent that you do not,
25 you need not rely on their testimony. Opinion testimony should

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Charge

1 receive whatever weight and credit, if any, you think
2 appropriate, given all the other evidence in the case.

3 Your verdict must be based solely on the evidence
4 developed at trial or the lack of evidence. It would be
5 improper for to you consider, in reaching your decision as to
6 whether the government has sustained its burden of proof, any
7 personal feelings that you may have about the defendant's race,
8 religion, national origin, sex or age. Similarly, it would be
9 improper for you to consider any personal feelings that you may
10 have about the race, religion, national origin, sex or age of
11 any witness or anyone else involved in this case. The
12 government and the defendants are entitled to a trial free of
13 prejudice, and our judicial system cannot work unless you reach
14 your verdict through a fair and impartial consideration of the
15 evidence.

16 You may not draw any inference, whether favorable or
17 unfavorable as to either side, from the fact that no person
18 other than Mr. Tuzman and Mr. Amanat is on trial here. You may
19 not speculate as to the reasons why other persons are not on
20 trial. Those matters are wholly outside your concern and have
21 no bearing on your function as jurors.

22 There are persons who names you heard during the trial
23 but who did not appear to testify. You should not draw any
24 inference or reach any conclusions as to what they would have
25 testified to had they been called. Their absence should not

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1 affect your judgment in any way. You should keep in mind my
2 instruction, however, that the law does not impose on a
3 defendant the burden or duty of calling any witnesses or
4 producing any evidence. It is the government's burden to prove
5 beyond a reasonable doubt each element of the crimes charged in
6 the indictment.

7 Mr. Tuzman and Mr. Amanat did not testify in this
8 case. Under our Constitution, a defendant has no obligation to
9 testify or present any evidence, because it is the government's
10 burden to prove the defendant's guilt beyond a reasonable
11 doubt. That burden remains with the government throughout the
12 trial and never shifts to a defendant. A defendant is never
13 required to prove that he is innocent.

14 You may not attach any significance to the fact that
15 Mr. Tuzman and Mr. Amanat did not testify. You may not draw
16 any inference against either defendant because he did not take
17 the witness stand. You may not speculate as to why he did not
18 testify, and you may not consider this against him in any way
19 in your deliberations.

20 You heard evidence that certain witnesses discussed
21 the facts of the case and their testimony with lawyers before
22 the witness appeared in court.

23 Although you may consider that fact when you are
24 evaluating a witness's credibility, you should be aware that
25 there is nothing unusual or improper about a witness meeting

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1 with lawyers before testifying. Indeed, it would be unusual
2 for a lawyer to call a witness to testify without such
3 preparation.

4 The weight you give to the fact or nature of the
5 witness's preparation for his or her testimony and what
6 inferences you draw from such preparation are matters
7 completely within your discretion.

8 The indictment in this case refers to various dates.
9 The government is not required to prove that the conduct took
10 place on the precise dates alleged in the indictment. The law
11 only requires a substantial similarity between the dates
12 alleged in the indictment and the dates established through
13 evidence at trial.

14 You heard evidence in the form of stipulations or
15 agreements between the parties. Some of the stipulations have
16 been as to facts, while others are testimonial stipulations,
17 agreements between the parties that a witness would testify as
18 to certain facts if called at trial. Where the parties have
19 entered into agreement as to certain facts, you must regard the
20 agreed upon facts as true. Similarly, where the parties have
21 entered into a testimonial stipulation, you must accept for
22 purposes of your deliberations that if that witness had been
23 called to testify, he or she would have testified as set forth
24 in the stipulation.

25 Certain summary charts were admitted into evidence.

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1 These charts were introduced to assist you in considering the
2 evidence that they summarize. These charts are only as
3 persuasive as the testimony and documents on which they are
4 based, however, and they are not themselves independent
5 evidence. Therefore, you are to give no greater consideration
6 to those summary charts than you would give to the evidence
7 upon which they are based.

8 The government offered evidence that at this trial
9 defendant Omar Amanat introduced emails into evidence that had
10 been fabricated. Mr. Amanat denies that any of the emails
11 introduced were fabricated.

12 As I have instructed you previously, the government's
13 evidence concerning allegedly fabricated emails has no
14 application whatsoever to Mr. Tuzman. It was offered solely as
15 against Mr. Amanat. The government does not contend that
16 Mr. Tuzman was involved in any fashion in the fabrication of
17 email, and you may not consider this evidence for any purposes
18 as to Mr. Tuzman.

19 As I have also instructed you previously, although the
20 evidence concerning allegedly fabricated emails was admitted
21 against Mr. Amanat, it was admitted only for a limited purpose.
22 That limited purpose is on the issue of whether it demonstrates
23 Mr. Amanat's consciousness of guilt. If you find that
24 Mr. Amanat introduced fabricated emails into evidence, you may,
25 but need not, infer that he believed that he was guilty of the

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1 charged crimes. You may not, however, infer on the basis of
2 this evidence alone that Mr. Amanat is in fact guilty of the
3 crimes with which he is charged.

4 To repeat, the evidence you heard regarding allegedly
5 fabricated emails may only be considered as to Mr. Amanat, and
6 only on the issue of whether it demonstrates Mr. Amanat's
7 consciousness of guilt. You may not infer on the basis of this
8 evidence alone that Mr. Amanat is guilty of the charged crimes.

9 As with all factual questions, it is the jury's
10 responsibility to determine whether this evidence does or does
11 not show consciousness of guilt on the part of Mr. Amanat.
12 Whether evidence that Mr. Amanat introduced fabricated emails
13 into evidence shows that he and believed that he was guilty of
14 the charged crimes and the significance, if any, to be given
15 such evidence are matters for you, the jury, to decide.

16 Mr. Tuzman and Mr. Amanat are charged with multiple
17 offenses. In a moment I will explain to you in great detail
18 what crimes each defendant is charged with and the elements of
19 those crimes. You should be aware, however, that the number of
20 offenses each defendant is charged with is not evidence of
21 guilt, and the mere number of counts charged in this case
22 should not influence your decision in any way.

23 Moreover, in our system of justice, guilt is personal
24 and individual. Accordingly, you must separately consider the
25 evidence against each defendant on each offense charged, even

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1 where the government has charged both defendants in a single
2 count. For each defendant and each offense, you must decide
3 whether the government has proved beyond a reasonable doubt
4 that a particular defendant is guilty of a particular offense.
5 You will be asked to return a separate verdict for each
6 defendant as to each offense with which that defendant has been
7 charged.

8 We'll take a one-minute stretch break now.

9 (Pause)

10 THE COURT: I will now turn to the law applicable to
11 the specific charges in this case.

12 The charges against the defendants are contained in an
13 indictment. As I told you at the outset of the case, an
14 indictment is not evidence, it's merely an accusation, a
15 statement of charges made against a defendant. It gives a
16 defendant notice of the charges against him, and informs the
17 court and the public of the nature of the accusation.

18 Given that the indictment is proof of nothing, a
19 defendant begins trial with an absolutely clean slate and
20 without any evidence against him.

21 The indictment in this case contains six charges or
22 counts. Mr. Amanat is charged in Counts One, Two, Three and
23 Four. Mr. Tuzman is charged in Counts Four, Five and Six.

24 Count One of the indictment charges Omar Amanat with
25 conspiracy to commit wire fraud. The government claims that

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1 Omar Amanat and his brother, Irfan Amanat, participated in a
2 scheme to defraud investors in Maiden Capital.

3 The indictment charges from in or about March 2009
4 through in or about June 2012, in the Southern District of New
5 York and elsewhere, Omar Amanat and Irfan Amanat, and others
6 known and unknown, willfully and knowingly combined, conspired,
7 confederated and agreed together and with each other to commit
8 wire fraud.

9 The indictment further charges that it was a part and
10 an object of the conspiracy that Omar Amanat and Irfan Amanat
11 and others, known and unknown, willfully and knowingly, having
12 devised and intending to devise a scheme and artifice to
13 defraud, and for obtaining money and property by means of false
14 and fraudulent pretenses, representations and promises, would
15 and did transmit and cause to be transmitted by means of wire,
16 radio, and television communication in interstate and foreign
17 commerce writings, signs, signals, pictures and sounds for the
18 purpose of executing such scheme and artifice.

19 Count Two of the indictment charges that Mr. Amanat
20 actually committed wire fraud by engaging in a scheme to
21 defraud investors in Maiden Capital.

22 The indictment states that from in or about March 2009
23 through in or about June 2012, in the Southern District of New
24 York and elsewhere, Omar Amanat willfully and knowingly, having
25 devised and intending to devise a scheme and artifice to

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1 defraud, and for obtaining money and property by means of false
2 and fraudulent pretenses, representations and promises,
3 transmitted and caused to be transmitted by means of wire,
4 radio, television communication and interstate and foreign
5 commerce, writing, signs, signals, pictures and sounds for the
6 purpose of executing such scheme and artifice, to wit, Omar
7 Amanat, Irfan Amanat and others schemed to defraud Maiden
8 Capital investors by causing Maiden to make material
9 misrepresentations and to omit material facts to Maiden Capital
10 investors about the status of their investments by wiring
11 hundreds of thousands of dollars to Maiden Capital in order to
12 pay certain redemptions and forestall Maiden Capital's
13 collapse, and by providing Maiden with false account statements
14 regarding Maiden Capital's investment in Enable, knowing that
15 such false account statements were intended to be presented and
16 were presented to Maiden Capital investors.

17 The indictment further alleges that Stephen Maiden,
18 using fictitious account numbers generated by Irfan Amanat, and
19 with the knowledge of Omar Amanat, generated fraudulent client
20 statements that failed to disclose the Enable losses and were
21 distributed to Maiden Capital's investors.

22 In Count Three, the government claims that Stephen
23 Maiden was an investment adviser and that Omar Amanat aided and
24 abetted Stephen Maiden's frauds on Maiden Capital's investors.

25 The indictment charges that from in or about

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1 March 2009 through in or about June 2012, in the Southern
2 District of New York and elsewhere, Omar Amanat willfully and
3 knowingly aided and abetted an investment adviser who used the
4 mails and other means and instrumentalities of interstate
5 commerce, directly and indirectly, A, to employ a device,
6 scheme and artifice to defraud clients and prospective clients,
7 B, to engage in a transaction, practice, and course of business
8 which operated as a fraud and deceit upon clients and
9 prospective clients, and C, to engage in an act, practice, and
10 course of business which was fraudulent, deceptive, and
11 manipulative, to wit, Omar Amanat aided and abetted fraud by
12 Maiden, an investment adviser, in which Maiden made false and
13 materially omissive statements to investors about the status of
14 their investments in Enable and the payment of redemptions.

15 The indictment further alleges that rather than disclose
16 the Enable losses to investors in the Maiden fund, as he was
17 legally obligated to do, Maiden concealed the Enable losses,
18 thereby acting in his own self interest and the interests of
19 Omar Amanat, his close associate, who did not want the Enable
20 losses to be exposed. By providing Maiden with capital
21 contributions to meet redemption requests knowing that Maiden
22 Capital's investors had been lied to by Maiden about the Enable
23 losses and the status of their investments, and by providing
24 false account statements regarding Maiden Capital's investment
25 in Enable, Omar Amanat assisted Maiden in carrying out his

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1 fraudulent scheme and helped Maiden to succeed in covering up
2 the losses for over three years.

3 In Count Four, the indictment charges that Mr. Tuzman and
4 Mr. Amanat engaged in conspiracy to commit securities fraud
5 through manipulating the market for KIT Digital stock.

6 The indictment alleges that from in or about December 2008
7 through in or about September 2011, in the Southern District of
8 New York and elsewhere, Kaleil Isaza Tuzman and Omar Amanat and
9 others, known and unknown, willfully and knowingly combined,
10 conspired, confederated and agreed together and with each other
11 to commit an offense against the United States, namely, fraud
12 in connection with the purchase and sale of securities issued
13 by KIT Digital.

14 The indictment further charges that it was a part and
15 object of the conspiracy that Kaleil Isaza Tuzman and Omar
16 Amanat and others, known and unknown, willfully and knowingly,
17 directly and indirectly, by the use of means and
18 instrumentalities of interstate commerce and of the mails and
19 of the facilities of national securities exchanges, would and
20 did use and employ, in connection with the purchase and sale of
21 securities, manipulative and deceptive devices and contrivances
22 by, A, employing device, schemes and artifices to defraud, B,
23 making untrue statements of material fact and omitting to state
24 material facts necessary in order to make the statements made,
25 in the light of the circumstances under which think were made,

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1 not misleading, and C, engaging in acts, practices and courses
2 of business which operated and would operate as a fraud and
3 deceit upon any person.

4 The indictment further alleges that in furtherance of the
5 conspiracy and to effect its illegal object, Kaleil Isaza
6 Tuzman and Omar Amanat and their co-conspirators, committed the
7 following overt acts, among others, in the Southern District of
8 New York and elsewhere:

9 1. On or about December 31, 2008, Tuzman, Omar Amanat, and
10 Stephen Maiden executed an agreement pursuant to which Maiden
11 agreed that Maiden Capital would buy at least \$400,000 of KIT
12 Digital common stock in the open market.

13 2. Between in or about January 2009 and in or about
14 February 2009, Maiden purchased over \$400,000 of KIT Digital
15 common stock through Maiden Capital.

16 3. In or about March 2011, Maiden bought and sold KIT
17 Digital shares in an effort to artificially inflate the price
18 of KIT Digital shares.

19 4. In or about July 2011, Omar Amanat and Tuzman met with
20 Maiden and others in Manhattan in part to discuss the losses
21 sustained in Enable.

22 Count Five. In Count Five, the indictment charges
23 Mr. Tuzman with conspiracy to commit wire fraud. The
24 government claims that Mr. Tuzman and others participated in a
25 scheme to defraud shareholders in KIT Digital by failing to

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1 disclose that KIT Digital's investments in Maiden Capital were
2 not part of an arm's length relationship but were actually
3 related party transactions entered into for an improper
4 purpose. The government also alleges that Mr. Tuzman falsely
5 represented to KIT Digital that a \$250,000 KIT Digital
6 investment with Maiden Capital was a legitimate investment,
7 whereas Mr. Tuzman and Maiden had agreed it was instead to be
8 paid to Mr. Tuzman for his personal use.

9 The indictment states that from at least in or about
10 March 2009 up to in or about March 2011, in the Southern
11 District of New York and elsewhere, Kaleil Isaza Tuzman and
12 others, known and unknown, willfully and knowingly combined,
13 conspired, confederated and agreed together and with each other
14 to commit wire fraud.

15 The indictment further charges that it was part and object
16 of the conspiracy that Kaleil Isaza Tuzman and others, known
17 and unknown, willfully and knowingly, having devised and
18 intending to devise a scheme and artifice to defraud, and for
19 obtaining money and property by means of false and fraudulent
20 pretenses, representations and promises, would and did transmit
21 and cause to be transmitted by means of wire, radio, and
22 television communication in interstate and foreign commerce,
23 writings, signs, signals, pictures and sounds for purposes of
24 executing such scheme and artifice.

25 Finally in Count Six the indictment alleges that Mr. Tuzman

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1 and others participated in a conspiracy to: One, commit
2 securities fraud; two, make false statements in KIT Digital's
3 annual and quarterly report filed with the Securities &
4 Exchange Commission, the SEC; and three, make false statements
5 to KIT Digital's auditors.

6 The indictment charges that from in or about 2009 through
7 in or about April 2012, in the Southern District of New York
8 and elsewhere, Kaleil Isaza Tuzman and Irfan Amanat and others,
9 known and unknown, willfully and knowingly combined, conspired,
10 confederated and agreed together and with each other to commit
11 offenses against the United States, namely: A, to commit fraud
12 in connection with the purchase and sale of securities issued
13 by KIT Digital; and B, to make and cause to be made false and
14 misleading statements of material fact in applications, reports
15 and documents required to be filed with the SEC under the
16 Securities Exchange Act of 1934 and the rules and regulations
17 thereunder; and C, to make and cause to be made false and
18 misleading statements and omissions to KIT Digital's auditors.

19 Count Six further charges that it was a part and object of
20 the conspiracy that Kaleil Isaza Tuzman and others, known and
21 known, willfully and knowingly, directly and indirectly, by the
22 use of the means and instrumentalities of interstate commerce
23 and of the mails and of the facilities of national securities
24 exchanges, would and did use and employ, in connection with the
25 purchase and sale of securities issued by KIT Digital,

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1 manipulative and deceptive devices and contrivances by: A,
2 employing devices, schemes and artifices to defraud; B, making
3 and causing KIT Digital to make untrue statements of material
4 fact and omitting to state material facts necessary in order to
5 make the statements made, in light of the circumstances under
6 which they were made, not misleading; and C, engaging in acts,
7 practices, and courses of business which operated and would
8 operate as a fraud and deceit upon any person.

9 Count Six goes on to allege that it was further a part and
10 object of the conspiracy that Kaleil Isaza Tuzman and Irfan
11 Amanat and others known and unknown, willfully and knowingly,
12 in applications, reports and documents required to be filed
13 with the SEC under the Securities Exchange Act of 1934, and the
14 rules and regulations thereunder, would and did make and cause
15 KIT Digital to make statements that were false and misleading
16 with respect to material facts.

17 Count Six also claims that it was further a part and object
18 of the conspiracy that Kaleil Isaza Tuzman, being an officer of
19 KIT Digital, an issuer with a class of securities registered
20 pursuant to Section 12 of the Securities Exchange Act of 1934,
21 Irfan Amanat and others, known and unknown, willfully and
22 knowingly would and did, directly and indirectly: A, makes and
23 cause to be made materially false and misleading statements;
24 and B, omit to state and cause other persons to omit to state
25 material facts necessary in order to make the statements made,

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1 in the light of the circumstances under which such statements
2 were made, not misleading to accountants in connection with,
3 (1), audits and examinations of the financial statements of KIT
4 Digital required to be filed with the SEC pursuant to rules and
5 regulations enacted by the SEC, and (2), the preparation and
6 filing of documents and reports required to be filed with the
7 SEC pursuant to rules and regulations enacted by the SEC.

8 Count Six further charges that in furtherance of the
9 conspiracy and to effect its illegal objects, Kaleil Isaza
10 Tuzman and Irfan Amanat and their co-conspirators committed the
11 following overt acts, among others, in the Southern District of
12 New York and elsewhere:

13 On or about August 16, 2010, Tuzman and Smyth signed KIT
14 Digital's form 10Q for the fiscal quarter ending June 30, 2010,
15 which was transmitted electronically to the SEC from New York,
16 New York.

17 On or about December 10, 2010, Rima Jameel and Smyth
18 executed an escrow agreement establishing the UAE escrow
19 account and agreed to place \$7.5 million of KIT Digital funds
20 in the UAE escrow account.

21 On or about March 16, 2011, Tuzman and Smyth signed KIT
22 Digital's form 10K for the fiscal year ending December 31,
23 2010, which was transmitted electronically to the SEC from New
24 York, New York.

25 On or about January 6, 2012, Tuzman signed KIT Digital's

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1 form 8K, which was transmitted electronically to the SEC from
2 New York, New York.

3 On or about March 13, 2012, Rima Jameel emailed a balance
4 confirmation to KIT Digital's independent auditors in which she
5 falsely claimed that the UAE escrow account contained
6 approximately \$6.1 million.

7 On or about March 30, 2012, Tuzman and Smyth signed KIT
8 Digital's form 10K for the fiscal year ending December 31,
9 2011, which was transmitted electronically to the SEC from New
10 York, New York.

11 On or about April 13, 2012, Tuzman caused KIT Capital to
12 wire \$3 million to JB Legal Consulting to replenish the UAE
13 escrow account.

14 On or about April 19, 2012, Rima Jameel caused JB Legal
15 Consulting to wire \$2,999,918 to KIT Digital as a purported
16 release of escrowed funds from the UAE escrow account.

17 On or about April 20, 2012, Tuzman caused KIT Capital to
18 wire \$5 million to JB Legal Consulting to further replenish the
19 UAE escrow account.

20 On or about April 26, 2012, Rima Jameel caused JB Legal
21 Consulting to wire \$4,999,949 to KIT Digital as a purported
22 release of escrowed funds from the UAE escrow account.

23 The defendants deny all of the charges in the indictment
24 and contend that the government has not proven any of these
25 charges beyond a reasonable doubt. As I have said, the

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1 indictment does not constitute evidence that either defendant
2 committed any of the crimes charged in the indictment.

3 In a moment I will instruct you on each of the charges in
4 detail. As I have said, you will be asked to render a verdict
5 as to each defendant and as to each count. Accordingly, you
6 must consider as to each defendant and as to each count whether
7 the government has proven all of the elements of each offense
8 beyond a reasonable doubt.

9 Count One, conspiracy to commit wire fraud Maiden Capital
10 investors.

11 In Count One of the indictment, Omar Amanat is charged with
12 violating Title 18, United States Code, Section 1349, which
13 states: Any person who conspires to commit any offense under
14 this chapter, including wire fraud, shall be guilty of a crime.

15 The government claims that Mr. Amanat conspired with
16 Stephen Maiden and others in connection with an alleged scheme
17 to defraud investors in Maiden Capital.

18 A conspiracy is a kind of criminal partnership, an
19 agreement between two or more people to join together to
20 accomplish some unlawful purpose.

21 The crime of conspiracy to commit wire fraud is a separate
22 and distinct offense from the actual commission of wire fraud.
23 Indeed, a defendant may be found guilty of conspiracy to commit
24 wire fraud even if the conspiracy was not successful and no
25 wire fraud was ever actually committed. That is because

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1 conspiracy to commit wire fraud is a stand-alone separate crime
2 premised on an illegal agreement.

3 With respect to wire fraud conspiracy charged in Count One,
4 the government must prove each of the following elements beyond
5 a reasonable doubt:

6 First, that the conspiracy charged in Count One existed,
7 that is, that from or about March 2009 through in or about
8 June 2012 an agreement or understanding between two or more
9 people existed to commit wire fraud; and

10 Second, that Omar Amanat willfully and knowingly joined and
11 participated in that conspiracy during the time period charged
12 in Count One.

13 The first element of the crime of conspiracy has is two
14 parts, an unlawful agreement, and an object of the conspiracy.

15 To establish a conspiracy, the government is not required
16 to show that two or more people sat down around a table and
17 entered into a solemn pact, orally or in writing, stating that
18 they had they had formed a conspiracy to violate the law and
19 spelling out all the details of the plans and the means by
20 which the unlawful project is to be carried out, or the part
21 that each of the persons who was a party to the conspiracy was
22 going to play.

23 When people undertake to enter into a criminal conspiracy,
24 much is often left to the unexpressed understanding.

25 Conspirators do not usually reduce their agreements to a formal

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1 writing. They don't typically publicly broadcast their plans.
2 From its very nature, a conspiracy is almost always secret in
3 its origin and execution.

4 It is enough if the evidence demonstrates two or more
5 people, in some way or manner, impliedly or tacitly, come to an
6 understanding to violate the law. Express language or specific
7 words are not required to indicate assent or agreement to
8 conspiracy. You need only find that two or more people entered
9 into the unlawful agreement alleged in Count One to find that a
10 conspiracy existed. What the government must prove is that
11 there was a mutual understanding, either spoken or unspoken,
12 between two or more people to cooperate with each other to
13 violate the law and to accomplish an unlawful act.

14 In determining whether the government has proven the
15 unlawful agreement alleged in Count One, you should consider
16 the proven acts and conduct of the alleged co-conspirators
17 undertaken to carry out the apparent criminal purpose. The
18 adage, "Actions speak louder than words" is applicable here.
19 Often the only evidence that is available is that of
20 disconnected acts that, when considered in connection with one
21 another, show a conspiracy or an agreement to secure a
22 particular result just as satisfactorily and conclusively as
23 more direct proof. As I have said, it is not necessary that
24 the conspiracy actually succeed for to you conclude that it
25 existed.

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1 In deciding whether the conspiracy charged in Count
2 One existed, you may consider all the evidence of the acts,
3 conduct, and statements of those you determine the government
4 has proven were co-conspirators, and the reasonable inferences
5 to be drawn from that evidence.

6 When people enter into a conspiracy to accomplish an
7 unlawful end, they become agents or partners of one another in
8 carrying out the conspiracy. In determining the factual issues
9 before you, you may take into account against Mr. Amanat any
10 acts or statements made by any of the alleged co-conspirators
11 during the course of the conspiracy, even though such acts or
12 statements were not made in Mr. Amanat's presence or made
13 without his knowledge.

14 It is sufficient to establish the existence of the
15 conspiracy if you find beyond a reasonable doubt that the minds
16 of at least two alleged conspirators met in an understanding
17 way and that they agreed, as I have explained, to work together
18 to accomplish the objective of the conspiracy charged in Count
19 One.

20 The second part of the conspiracy element relates to
21 the object or objective of the conspiracy. According to the
22 indictment, the objective of the conspiracy charged in Count
23 One was to commit wire fraud. In order for you to determine
24 whether Mr. Amanat conspired to commit wire fraud, you must
25 understand the elements of that offense. Accordingly, I will

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1 instruct you now on the elements of wire fraud. You will apply
2 these same instructions concerning the elements of wire fraud
3 when you consider Count Two, which charges Mr. Amanat with the
4 actual commission of wire fraud.

5 In order to prove that a defendant committed wire
6 fraud, the government must establish beyond a reasonable doubt
7 the following three elements: First, that in or about the time
8 period alleged in the indictment there was a scheme or artifice
9 to defraud others of money or property by means of false or
10 fraudulent pretenses, representations or promises.

11 Second, that the defendant knowingly and willfully
12 devised or participated in the scheme or artifice to defraud,
13 with knowledge of its fraudulent nature and with the specific
14 intent to defraud.

15 And third, that in the execution of that scheme, the
16 defendant used or caused the use by others of interstate or
17 international wires.

18 The first element of wire fraud requires the
19 government to prove beyond a reasonable doubt the existence of
20 a scheme or artifice to defraud others of money or property by
21 means of false or fraudulent pretenses, representations or
22 promises.

23 A scheme or artifice is simply a plan for the
24 accomplishment of an object.

25 Fraud includes all the possible means by which a

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1 person seeks to gain some unfair advantage over another person
2 by false representations, false suggestion, false pretenses, or
3 concealment of the truth. The unfair advantage sought can
4 involve property, money, or any other thing of value.

5 Thus, a scheme to defraud is any plan, device, or
6 course of action to deprive another of money or property by
7 means of false or fraudulent pretenses, representations or
8 promises. It is a plan to deprive another of money or property
9 by trick, deceit, deception, swindle or overreaching.

10 Even where statements allegedly made in furtherance of
11 a scheme to defraud were literally true, you can still find
12 that the first element of the wire fraud statute has been
13 satisfied if the statements and/or conduct of the defendant
14 were deceptive. You may also find the existence of such a
15 scheme if you find that the defendant conducted himself in a
16 manner that departed from traditional notions of fundamental
17 honesty and fair play in the general business life of society,
18 and that this conduct was deceptive.

19 A scheme to defraud need not be shown by direct
20 evidence but may be established by all the circumstances and
21 facts of the case.

22 A pretense, representation, or a statement is
23 fraudulent if it was made falsely and with intent to deceive.
24 A statement may also be fraudulent if it contains half truths
25 or if it conceals material facts in a manner that makes what is

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1 said or represented deliberately misleading or deceptive.

2 The alleged false or fraudulent representation or
3 concealment must, however, relate to a material fact or matter.
4 A material fact is one that would reasonably be expected to be
5 of concern to a reasonable and prudent person in relying upon
6 the representation or statement in making a decision. This
7 means that if you find that a particular statement or
8 representation false, you must determine whether the statement
9 or representation was one that a reasonable person might have
10 considered important in making his or her decision. The same
11 principle applies to fraudulent half truths or omissions, that
12 is, failures to disclose facts.

13 In order to satisfy this first element, the government
14 must also prove that the alleged scheme contemplated depriving
15 another of money or property. It is not necessary for the
16 government to establish that a defendant actually realized any
17 gain from the scheme, or that any particular person actually
18 suffered damages as a consequence of the fraudulent scheme.
19 The key point is whether there was a scheme that contemplated
20 depriving another of money or property, not the consequences of
21 such a scheme.

22 In this regard, a person is not deprived of money or
23 property only when someone directly takes his money or property
24 from him. Rather, a person is also deprived of money or
25 property when that person is provided false or fraudulent

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1 information that, if believed, would prevent him from being
2 able to make informed decisions about what to do with his money
3 or property.

4 In other words, a person is deprived of money or
5 property when he is deprived of the right to control that money
6 or property, and he is deprived of the right to control that
7 money or property when he is provided with false or fraudulent
8 information that affects his ability to make discretionary
9 economic decisions about what to do with that money or
10 property.

11 If you find that the government has sustained its
12 burden of proof that the scheme to defraud charged in Count One
13 existed, you next should consider the second element.

14 The second element of wire fraud is that the defendant
15 devised or participated in the fraudulent scheme knowingly,
16 willfully and with a specific intent to defraud.

17 To devise a scheme to defraud is to concoct or plan
18 it.

19 To participate in a scheme to defraud means to
20 associate oneself with it with a view and intent toward making
21 it succeed. While a mere onlooker is not a participant in a
22 scheme to defraud, it is not necessary that a participant be
23 someone who personally and visibly executes the scheme to
24 defraud.

25 In order to satisfy this element, it is not necessary

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1 for the government to establish that the defendant originated
2 the scheme to defraud. It is sufficient if you find that a
3 scheme to defraud has been proven, even if originated by
4 another, and that the defendant, while aware of the scheme's
5 existence, knowingly participated in it.

6 It is also not required that the defendant participate
7 in all of the operations of the fraud scheme or that he had
8 knowledge of all of the operations of the fraud scheme. The
9 guilt of a defendant does not turn on the extent of his
10 participation.

11 It also is not necessary that the defendant
12 participated in the alleged scheme from the beginning. A
13 person who comes in at a later point with knowledge of the
14 scheme's general operation, although not necessarily all its
15 details, and intentionally acts in a way to further the
16 unlawful goals, becomes a member of the scheme and is legally
17 responsible for all that may have been done in the past in
18 furtherance of the criminal objective and all is that is done
19 thereafter. Even if a defendant participated in the scheme to
20 a lesser degree than others, he is nevertheless equally guilty,
21 so long as the government has proven that that defendant
22 participated in the scheme to defraud with knowledge of its
23 general scope and purpose.

24 Before a defendant may be convicted of wire fraud, the
25 government must prove that he acted knowingly and willfully and

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1 with a specific intent to defraud. I will now define the terms
2 knowingly, willfully, and intent to defraud.

3 A person acts knowingly if he acts intentionally,
4 deliberately and voluntarily, and not because of ignorance,
5 mistake, accident or carelessness.

6 A person acts willfully if he acts deliberately and
7 with the intent to do something that the law forbids, that is,
8 with a bad purpose to disobey or disregard the law.

9 In the wire fraud context, a defendant acts with
10 specific intent to defraud if he engages or participates in the
11 fraudulent scheme with knowledge of its fraudulent or deceptive
12 character and with an intention to be involved in the scheme to
13 defraud and to help it succeed, all with a purpose of causing
14 harm to the alleged victims, that is, to deprive the victims of
15 money or property. The government need not prove that the
16 intended victims were actually harmed, only that such harm was
17 contemplated. A defendant is presumed to intend the natural
18 and probable consequences of his actions. So when the
19 necessary result of a defendant's scheme is to injure others,
20 fraudulent intent may be inferred from the scheme itself.

21 The question of whether a person acted knowingly,
22 willfully, and with specific intent to defraud is a question of
23 fact for you to determine, like any other fact question. This
24 issue obviously involves the defendant's state of mind. Direct
25 proof of knowledge and fraudulent intent is often not

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1 available. It would be a rare case where it could be shown
2 that a person wrote or stated that as of a given time in the
3 past he committed an act with fraudulent intent. Such direct
4 proof is not required. The existence of knowledge,
5 willfulness, and criminal intent, though subjective, may be
6 established by circumstantial evidence based upon a person's
7 outward manifestations, his words, his conduct, his acts and
8 all the surrounding circumstances disclosed by the evidence and
9 the rational or logical inferences that may be drawn therefrom.

10 Because an essential element of wire fraud is intent
11 to defraud, a defendant's good faith, as I will define that
12 term, is a complete defense to a charge of wire fraud. A
13 defendant has no burden to establish a defense of good faith.
14 The burden is on the government to prove fraudulent intent and
15 consequent lack of good faith beyond a reasonable doubt, even
16 false representations or statements or omissions of material
17 facts do not amount to a fraud unless done with fraudulent
18 intent. However misleading or deceptive a plan may be, it is
19 not fraudulent if it was carried out in good faith. A
20 defendant's honest belief in the truth of the representations
21 made is a complete defense, however inaccurate the statements
22 may turn out to be.

23 In considering whether a defendant acted in good
24 faith, however, you should be aware that a defendant's belief
25 that ultimately everything would work out so that no investor

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1 would lose any money, or that particular investments would
2 ultimately be financially advantageous for clients, does not
3 necessarily constitute good faith. No amount of honest belief
4 on the part of a defendant that a scheme will ultimately make a
5 profit for the investors will excuse fraudulent actions or
6 false representations by him to deprive others of money or
7 property.

8 The third and final element of wire fraud that the
9 government must establish beyond a reasonable doubt is that
10 interstate or foreign wire facilities were used in furtherance
11 of the scheme to defraud.

12 The interstate or foreign requirement means that the
13 wire communication must pass between two or more states, as for
14 example, a transmission of computer signals between New York
15 and another state, such as New Jersey, California or a
16 territory such as the U.S. Virgin Islands, or between the
17 United States and another country.

18 It is not necessary for a defendant to be directly or
19 personally involved in any wire communication, so long as the
20 communication is reasonably foreseeable in the execution of the
21 alleged scheme to defraud in which the defendant is accused of
22 participating. In this regard, it would be sufficient to
23 establish this element of the crime if the evidence justifies a
24 finding that a defendant caused the wires to be used by others.
25 This does not mean that the defendant himself must have

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1 specifically authorized others to execute a wire communication.
2 When one commits an act with knowledge that the use of a wire
3 will follow in the ordinary course of business, or where such
4 use of the wires can reasonably be foreseen, even though not
5 actually intended, then he causes the wires to be used. The
6 wire communication requirement may be satisfied even if the
7 wire communication was done by a person with no knowledge of
8 the fraudulent scheme, including the victim of the alleged
9 fraud.

10 The use of the wire need not itself be fraudulent.
11 Stated another way, the wire communication need not contain any
12 fraudulent representation or even any request for money. It is
13 sufficient if the wires were used to further or assist in
14 carrying out the scheme to defraud.

15 The government must establish beyond a reasonable
16 doubt the particular use of the wires charged in the
17 indictment. However, the government does not have to prove
18 that an interstate wire was used on any precise dates alleged
19 in the indictment. It is sufficient if the evidence
20 establishes beyond a reasonable doubt that a wire was used on a
21 date reasonably near the time period alleged in the indictment.

22 You should also be aware that only the wire
23 communication must be reasonably foreseeable to the defendant,
24 not its interstate or foreign component. Thus, if you find
25 that the wire communication was reasonably foreseeable, and the

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1 interstate or foreign wire communications actually took place,
2 then this element is satisfied even if it was not foreseeable
3 that the wire communication would cross state or national
4 lines.

5 If you conclude that the government has proven beyond
6 a reasonable doubt that the conspiracy charged in Count One
7 existed, and that the conspiracy had as its object the illegal
8 purpose charged in the indictment, then you must next determine
9 whether Mr. Amanat participated in the conspiracy with
10 knowledge of its unlawful purpose and in furtherance of its
11 unlawful objective.

12 (Continued on next page)

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1 THE COURT: The government must prove beyond a
2 reasonable doubt that Mr. Amanat willfully and knowingly
3 entered into the conspiracy charged in Count One with criminal
4 intent -- that is, with a purpose to violate the law -- and
5 that he agreed to take part in the conspiracy to promote and
6 cooperate in its unlawful objective. "Knowingly" and
7 "willfully" have the same meaning that I provided to you
8 earlier. The terms "knowingly" and "willfully" are intended to
9 ensure that if you find that Mr. Amanat joined the charged
10 conspiracy, you also conclude beyond a reasonable doubt that in
11 doing so, he knew what he was doing; in other words, that he
12 took the actions in question deliberately and voluntarily.

13 The key question is whether Mr. Amanat entered into
14 the unlawful agreement charged in Count One with an awareness
15 of at least some of the basic aims and purposes of the alleged
16 unlawful agreement. Mr. Amanat's participation in the
17 conspiracy may be established by evidence of his own acts or
18 statements, as well as those of any alleged coconspirator, and
19 the reasonable inferences which may be drawn from the acts and
20 statements.

21 It is not necessary for the government to show that
22 Mr. Amanat was fully informed as to all the details of the
23 conspiracy in order for you to infer knowledge on his part. To
24 have guilty knowledge, a defendant need not know the full
25 extent of the conspiracy, or of all of the activities of all of

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1 its participants. It is not even necessary for the defendant
2 to know every other member of the conspiracy. In fact, a
3 defendant may know only one member of the conspiracy and still
4 be a coconspirator. Nor is it necessary for a defendant to
5 receive any monetary benefit from his participation in the
6 conspiracy, or that he have any financial stake in the outcome.
7 It is enough if he participated in the conspiracy willfully and
8 knowingly, as I have defined those terms.

9 The duration and extent of a defendant's participation
10 has no bearing on his guilt. A defendant need not have joined
11 the conspiracy at the outset. If a defendant joined the
12 conspiracy at any time in its progress, he will be held
13 responsible for all that was done before he joined and all that
14 was done during the conspiracy's existence while he was a
15 member. Moreover, each member of the conspiracy may perform
16 separate and distinct acts. Some conspirators play major
17 roles, while others play minor roles in the scheme. An equal
18 role is not what the law requires. In fact, even a single act
19 may be sufficient to draw a defendant within the scope of a
20 conspiracy.

21 I want to caution you, however, that a person's mere
22 association with a member of the conspiracy does not make that
23 person a member of the conspiracy, even when that association
24 is coupled with knowledge that a conspiracy is taking place.
25 In other words, knowledge without agreement and participation

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1 is not sufficient. You may not find that Mr. Amanat is a
2 member of the conspiracy charged in Count One merely because of
3 a family or business relationship with an alleged
4 coconspirator. Similarly, mere discussion of common aims and
5 interests does not necessarily establish membership in a
6 conspiracy. What is necessary is that Mr. Amanat joined in the
7 conspiracy charged in Count One with knowledge of its unlawful
8 purpose, and with an intent to aid in the accomplishment of its
9 unlawful objective.

10 In sum, a defendant, with an understanding of the
11 unlawful character of the conspiracy, must have intentionally
12 engaged, advised, or assisted in it for the purpose of
13 furthering an illegal undertaking. A defendant thereby becomes
14 a knowing and willing participant in the unlawful agreement --
15 that is to say, a conspirator.

16 A conspiracy, once formed, is presumed to continue
17 until either its objective is accomplished or there is some
18 affirmative act of termination by its members. So, too, once a
19 person is found to be a member of a conspiracy, he is presumed
20 to continue his membership in the venture until its
21 termination, unless it is shown by some affirmative proof that
22 he withdrew and disassociated himself from it, such as a
23 communication of abandonment in a manner reasonably calculated
24 to reach coconspirators.

25 Count One of the indictment charges that from in or

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1 about March 2009 through in or about June 2012, Omar Amanat
2 conspired to commit Wire fraud in connection with a scheme to
3 defraud investors in Maiden Capital. The government is not
4 required to prove that the conspiracy charged in Count One
5 started and ended on any specific date. It is sufficient if
6 you find that the conspiracy was formed and that it existed at
7 some time within or around the dates set forth in the
8 indictment.

9 In addition to the elements of conspiracy that I have
10 discussed, you must also consider the issue of venue, whether
11 an overt act in furtherance of the conspiracy occurred within
12 the Southern District of New York. I instruct you that the
13 Southern District of New York includes Manhattan.

14 As to the conspiracy charged in Count One, it is
15 sufficient to find venue in the Southern District of New York
16 if you find that Mr. Amanat or a coconspirator committed any
17 act in furtherance of the conspiracy in this district during
18 the existence of the conspiracy.

19 As to venue, and venue alone, the government's burden
20 of proof is not proof beyond a reasonable doubt. Instead,
21 venue may be established by a preponderance of the evidence. A
22 preponderance of the evidence means more likely than not.
23 Thus, the government has satisfied its burden under the venue
24 element if you conclude that it is more likely than not that
25 Mr. Amanat or a coconspirator committed an act in furtherance

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1 of the Count One conspiracy within the Southern District of New
2 York. If, on the other hand, you find that the government has
3 failed to prove venue by a preponderance of the evidence, then
4 you must find Mr. Amanat not guilty.

5 One more stretch break, ladies and gentlemen. Groans
6 are permitted.

7 All right. Let's continue, ladies and gentlemen.

8 Count Two: Wire fraud -- Maiden Capital Investors.

9 Count Two of the indictment charges Mr. Amanat with
10 actually committing wire fraud between in or about March 2009
11 and in or about June 2012. This is the same wire fraud that is
12 the object of the conspiracy charged in Count One.

13 The wire fraud statute provides that whoever, having
14 devised or intending to devise any scheme or artifice to
15 defraud, or for obtaining money or property by means of false
16 or fraudulent pretenses, representations, or promises,
17 transmits or causes to be transmitted by means of wire, radio,
18 or television communication in interstate or foreign commerce,
19 any writings, signs, signals, pictures, or sounds for the
20 purpose of executing such scheme or artifice, shall be guilty
21 of a federal crime.

22 Count Two charges that Mr. Amanat committed wire fraud
23 in connection with an alleged scheme to defraud Maiden Capital
24 investors by causing Stephen Maiden to make material
25 misrepresentations and to omit material facts in communications

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1 to Maiden Capital investors about the status of their
2 investments; by wiring hundreds of thousands of dollars to
3 Maiden Capital in order to pay certain redemptions and
4 forestall Maiden Capital's collapse; and by providing Maiden
5 with false account statements regarding Maiden Capital's
6 investment in Enable, knowing that such false account
7 statements were intended to be presented, and were presented,
8 to Maiden Capital investors. According to the government,
9 Maiden -- using fictitious account numbers generated by Irfan
10 Amanat, and with the knowledge of Omar Amanat -- generated
11 fraudulent client statements that failed to disclose the Enable
12 losses and were distributed to Maiden Capital's investors.

13 As I instructed you in connection with the wire fraud
14 conspiracy charged in Count One, in order to prove the
15 defendant guilty of actually committing wire fraud, the
16 government must prove beyond a reasonable doubt each of the
17 following three elements:

18 First, that in or about the times alleged in the
19 indictment, there was a scheme or artifice to defraud others of
20 money or property by false or fraudulent pretenses,
21 representations, or promises;

22 Second, that Mr. Amanat knowingly and willfully
23 devised or participated in the scheme or artifice to defraud,
24 with knowledge of its fraudulent nature and with the specific
25 intent to defraud; and

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1 Third, that in the execution of that scheme, Mr.
2 Amanat used, or caused the use by others of, interstate or
3 foreign wires.

4 I have already defined each of these elements in my
5 instructions concerning Count One.

6 All of those instructions apply with equal force to
7 the actual commission of wire fraud charged in Count Two, and
8 you must rely on those instructions in determining whether the
9 government has met its burden of proof on Count Two.

10 In addition to proving beyond a reasonable doubt all
11 of the elements of wire fraud as I have explained them to you,
12 the government must prove that an interstate wire in
13 furtherance of the alleged wire fraud originated, passed
14 through, or terminated in the Southern District of New York.
15 As I have instructed you, as to venue and venue alone, the
16 government's burden of proof is proof by preponderance of the
17 evidence -- more likely than not. If you find that the
18 government has not proven venue by a preponderance, then you
19 must find Mr. Amanat not guilty on Count Two.

20 Count Two also charges Mr. Amanat with "aiding and
21 abetting" wire fraud. This is an alternative theory of
22 criminal liability. A defendant may be guilty of wire fraud if
23 he acted as the principal who committed the crime, but a
24 defendant may also be guilty of wire fraud if he aided or
25 abetted someone else who actually committed that crime.

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1 The "aiding and abetting" statute provides that
2 whoever commits an offense against the United States or aids
3 and abets or counsels, commands or induces, or procures its
4 commission, is punishable as a principal.

5 Under the aiding and abetting statute, it is not
6 necessary for the government to show that the defendant himself
7 actually committed the crime with which he is charged in order
8 for you to find the defendant guilty. Even where the evidence
9 does not demonstrate that a defendant himself committed the
10 crime charged, you may, under certain circumstances, still find
11 that defendant guilty of that crime as an aider or abettor.

12 A person who aids or abets another to commit an
13 offense is just as guilty of that offense as if he committed it
14 himself. Accordingly, you may find Mr. Amanat guilty of wire
15 fraud if you find beyond a reasonable doubt that the government
16 has proven that another person actually committed the charged
17 wire fraud, and that Mr. Amanat aided and abetted that person
18 in committing that offense.

19 The first requirement for finding aiding and abetting
20 liability is that another person actually committed the charged
21 wire fraud. No one can be convicted of aiding and abetting the
22 criminal acts of another if no crime was committed by the other
23 person in the first place. Here, if you find that another
24 person committed the charged wire fraud, you must then consider
25 whether Mr. Amanat aided or abetted that person in committing

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1 wire fraud.

2 In order to aid or abet another in committing a crime,
3 a defendant must have willfully and knowingly associated
4 himself in some way with the crime, and willfully and knowingly
5 sought by some act to help make the crime succeed.

6 Participation in the crime is willful if action is taken
7 voluntarily and intentionally, or, in the case of a failure to
8 act, with the specific intent to fail to do something the law
9 requires to be done; that is to say, with a bad purpose either
10 to disobey or to disregard the law.

11 The mere presence of a defendant where a crime is
12 being committed, even coupled with knowledge by the defendant
13 that a crime is being committed, or the mere acquiescence by a
14 defendant in the criminal conduct of others, even with guilty
15 knowledge, is not sufficient to establish aiding and abetting.
16 An aider or abettor must have some interest in the criminal
17 venture.

18 In determining whether Mr. Amanat aided or abetted the
19 commission of the wire fraud charged in Count Two, ask yourself
20 these questions:

21 Did he participate in the crime charged in Count Two
22 as something he wished to bring about?

23 Did he knowingly and willfully associate himself with
24 the criminal venture charged in Count Two?

25 Did he seek by his actions to make the criminal

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1 venture charged in Count Two succeed?

2 If Mr. Amanat did these things, then he aided and
3 abetted in the wire fraud charged in Count Two, and is guilty
4 of that offense. If, on the other hand, your answer to any of
5 these questions is "no," then Mr. Amanat is not an aider and
6 abettor, and is not guilty as an aider and abettor of that
7 offense.

8 A defendant may also be guilty as an aider or abettor
9 where he willfully causes a crime. The aiding and abetting
10 statute provides that whoever willfully causes an act to be
11 done which if directly performed by him or another would be an
12 offense against the United States shall be guilty of a federal
13 crime.

14 What does the term "willfully caused" mean? It does
15 not mean that Mr. Amanat himself committed wire fraud or that
16 he supervised or participated in the wire fraud charged in
17 Count Two.

18 In determining whether Mr. Amanat "willfully caused"
19 the wire fraud charged in Count Two, you should ask yourself
20 the following questions:

21 Did Mr. Amanat take some action without which the
22 crime would not have occurred?

23 Did Mr. Amanat intend that the crime would be actually
24 committed by others?

25 If you are persuaded beyond a reasonable doubt that

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1 the answer to both of these questions is "yes," then Mr. Amanat
2 is as guilty of the crime charged in Count Two as if he had
3 actually committed the wire fraud charged in Count Two.

4 Count Three: Aiding and Abetting Investment Adviser
5 Fraud.

6 Count Three of the indictment charges that, from in or
7 about March 2009 through in or about June 2012, Mr. Amanat
8 aided and abetted Stephen Maiden -- an investment adviser as a
9 result of his position at Maiden Capital -- in committing
10 investment adviser fraud.

11 Federal law provides that it shall be unlawful for any
12 investment adviser by use of the mails or any means or
13 instrumentality of interstate commerce, directly or indirectly
14 (a) to employ any device, scheme, or artifice to defraud any
15 client or prospective client; (B) to engage in any transaction,
16 practice, or course of business which operates as a fraud or
17 deceit upon any client or prospective client; or (c) to engage
18 in any act, practice, or course of business that was
19 fraudulent, deceptive or manipulative.

20 You should be aware that an investment adviser has an
21 affirmative duty of utmost good faith, and full and fair
22 disclosure of all material facts, as well as an affirmative
23 obligation to employ reasonable care to avoid misleading his
24 clients. An investment adviser's concealment of material
25 information which he or she is under a duty to disclose to

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1 another, under circumstances where the disclosure can or does
2 result in harm to an investor, can constitute fraud.

3 I understand a juror needs to use the bathroom, so
4 we'll take a very brief recess for that purpose.

5 (Jury not present)

6 THE COURT: Please be seated.

7 MR. NAFTALIS: Your Honor, we have one minor issue to
8 raise. I think that the verdict sheet should say "investment
9 adviser" under Count Three, not investor adviser.

10 THE COURT: I'm sorry?

11 MR. NAFTALIS: The verdict sheet refers to, Count
12 Three, investor adviser, not investment adviser.

13 THE COURT: That's a typo. We'll fix that.

14 MR. WEITZMAN: Your Honor, Mr. McRae and I are both
15 running to the facilities.

16 MR. JACKSON: Your Honor, I have a brief issue I have
17 to raise. I apologize, but I have to raise it.

18 During the government's rebuttal summation, there was
19 reference to California to North Carolina wires.

20 THE COURT: I'm sorry?

21 MR. JACKSON: There was reference to California to
22 North Carolina wires, and there was also reference to
23 KITDigital wires that the government referred to, I believe, as
24 answering the questions that I raised about whether or not the
25 government had established that a wire in furtherance of the

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1 conspiracies charged in Counts One and Two had been
2 established.

3 Two issues. One, the government did not state on the
4 record what exhibits it was referring to, so it's difficult to
5 understand what the government is talking about. That's not on
6 the record.

7 Second, I'm not aware of testimony that specified a
8 California to North Carolina wire that was sent in furtherance
9 of the conspiracy. I'm just not aware of it, so I'd ask the
10 government to identify it.

11 And third, I don't think that any KITDigital wire can
12 be appropriately connected to the fraud schemes that are
13 charged in Counts One and Two.

14 I think those are issues that may require additional
15 discussion.

16 MR. WILLIAMS: Your Honor, we strongly disagree. All
17 the records that we pointed the jury to are in evidence, No. 1.

18 With regard to the KITDigital wire into Maiden
19 Capital, KITDigital was an investor in Maiden Capital, and they
20 wired money into Maiden Capital as part of the scheme. Maiden
21 caused them to wire him money knowing that he was broke, and so
22 we certainly think that that is a wire that the jury can
23 consider, and it was backed up by the evidence.

24 Mr. Jackson had made many arguments in advance of the
25 summation that the government didn't have sufficient evidence

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1 of venue and interstate wires, but the bank records are in
2 evidence. We had told Mr. Jackson that there are other
3 exhibits that we could point to that are clear on their face,
4 but obviously he objected to us reopening our case for that
5 purpose, so we just did the work of putting together the
6 various bank statements.

7 We don't exactly know what the issue is, but we're
8 arguing from what's in evidence.

9 THE COURT: What's the California to North Carolina
10 wire?

11 MR. WILLIAMS: We had Government Exhibit 3800-AA,
12 which is a summary chart listing all the wires that were sent
13 from Enable to Maiden Capital. Now, those were based on a few
14 other exhibits including -- this is off memory, your Honor --
15 Government Exhibit 634, for instance, which is the First
16 Republic wires. That's the Enable account. That account was
17 based in San Francisco, California, and the Maiden Capital
18 account is the Bank of America account. The various bank
19 records include location information. They say SF for the
20 Enable account, NC for the North Carolina Bank of America
21 account, and we were simply pulling from the documents that are
22 in evidence showing where the various bank accounts are
23 located.

24 We don't think that's controversial.

25 THE COURT: Anything you want to say, Mr. Jackson?

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1 MR. JACKSON: Yes, your Honor. There are two things I
2 want to say.

3 One, this implicates precisely the notice concerns
4 that I raised as well as the concerns about whether or not it
5 would implicate the charge in terms of potential constructive
6 amendment of the indictment. It is very difficult to
7 understand how the jury could make a determination based on
8 that as to whether or not the KITDigital wire that was
9 referenced was actually a KITDigital wire that's connected to
10 Counts One and Two as opposed to some wires connected to Counts
11 Five and Six. I didn't even understand it.

12 Secondly, your Honor, I think what Mr. Williams is
13 saying is that because the address of whoever is, you know, the
14 registered address of whoever has this bank account is in a
15 particular state that the jury could infer that any particular
16 wire that was sent from that account is a wire transmission
17 that went from California to North Carolina. I don't think
18 that that would be a fair inference, your Honor, and I think it
19 implicates also, and this is the last thing I'll say, what the
20 Court said at the very beginning of the case, which is that we
21 were not going to have argument about documents and portions of
22 documents that were not exposed to the jury during the course
23 of trial.

24 I have no idea what Mr. Williams is talking about, and
25 if it's buried in some document that there is a California to

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1 North Carolina wire, I'm just saying I had no opportunity to
2 understand what that was, and after he said it, I moved as
3 diligently as possible to try to understand and see if that was
4 in the record, and I don't see it.

5 MR. WILLIAMS: Your Honor, there was summary witness
6 testimony about these bank wires. The exhibits that the
7 summary testimony was based on were specified as well. If you
8 look at the underlying documents, it's in the record.

9 THE COURT: All right. Do you have any application,
10 Mr. Jackson, at this point?

11 MR. JACKSON: My application, your Honor, is that the
12 jury be instructed to disregard that argument.

13 THE COURT: All right. That application is denied.
14 Just take a brief recess and then we'll resume with
15 the charge.

16 (Recess)

17 (Jury present)

18 THE COURT: Please be seated.

19 Ladies and gentlemen, I'll go back to page 47 where I
20 started the discussion of this count, because I don't want you
21 to lose any of the context. Picking up page 47 with Count
22 Three: Aiding and Abetting Investment Adviser Fraud.

23 Count Three of the indictment charges that, from in or
24 about March 2009 through in or about June 2012, Mr. Amanat
25 aided and abetted Stephen Maiden -- an investment adviser as a

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1 result of his position at Maiden Capital -- in committing
2 investment adviser fraud.

3 Federal law provides that it shall be unlawful for any
4 investment adviser by use of the mails or any means or
5 instrumentality of interstate commerce, directly or indirectly
6 (a) to employ any device, scheme, or artifice to defraud any
7 client or prospective client; (B) to engage in any transaction,
8 practice, or course of business which operates as a fraud or
9 deceit upon any client or prospective client; or (c) to engage
10 in any act, practice, or course of business that was
11 fraudulent, deceptive or manipulative.

12 You should be aware that an investment adviser has an
13 affirmative duty of utmost good faith, and full and fair
14 disclosure of all material facts, as well as an affirmative
15 obligation to employ reasonable care to avoid misleading his
16 clients. An investment adviser's concealment of material
17 information which he or she is under a duty to disclose to
18 another, under circumstances where the nondisclosure can or
19 does result in harm to an investor, can constitute fraud.

20 In order to prove Mr. Amanat guilty of the crime of
21 aiding and abetting investment adviser fraud, the government
22 must prove the following elements:

23 First, that Stephen Maiden was an investment adviser;

24 Second, that Stephen Maiden did one of the following:

25 (a) employed a device, scheme, or artifice to defraud an actual

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1 or prospective investor in Maiden Capital; (b) engaged in a
2 transaction, practice, or course of business which operated as
3 a fraud and deceit upon an actual or prospective investor in
4 Maiden Capital; or (c) engaged in an act, practice, and course
5 of business that was fraudulent, deceptive, and manipulative;

6 Third, that Stephen Maiden devised or participated in
7 such alleged device, scheme or artifice to defraud, or engaged
8 in such alleged transaction, practice, or course of business,
9 knowingly, willfully, and with the intent to fraud;

10 Fourth, that Stephen Maiden employed such alleged
11 device, scheme, or artifice to defraud, or engaged in such
12 alleged transaction, practice, or course of business, by use of
13 the mails or an instrumentality of interstate commerce; and

14 Fifth, that Mr. Amanat willfully and knowingly
15 associated himself in some way with Maiden's commission of
16 investment adviser fraud, willfully and knowingly sought by
17 some act to help make Maiden's crime succeed, and that he did
18 so with the specific intent to deceive Maiden's clients.

19 In addition to proving beyond a reasonable doubt all
20 of these elements of aiding and abetting investment adviser
21 fraud, the government must prove venue by establishing -- by a
22 preponderance of the evidence -- that an act in furtherance of
23 the alleged unlawful activity occurred within the Southern
24 District of New York.

25 With respect to Count Three, the first element the

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1 government must prove beyond a reasonable doubt is that Stephen
2 Maiden was an investment adviser at the time Mr. Amanat is
3 alleged to have aided and abetted Maiden's investment adviser
4 fraud.

5 Federal law defines "investment adviser" as follows:

6 Investment adviser means any person who, for
7 compensation, engages in the business of advising others,
8 either directly or through publications or writings, as to the
9 value of securities or as to the advisability to investing in,
10 purchasing or selling securities, or who, for compensation and
11 as part of a regular business, issues or promulgates analyses
12 or reports concerning securities.

13 In determining whether Stephen Maiden was an
14 investment adviser, you should consider the following:

15 Whether Maiden provided advice or was an adviser who
16 regarding who issued reports or analyses regarding securities;

17 Whether Maiden was in the business of providing such
18 advice; and

19 Whether Maiden was provided compensation for such
20 advice.

21 With respect to Count Three, the second element the
22 government must prove beyond a reasonable doubt is that Stephen
23 Maiden did one or more of the following: (a) employed a
24 device, scheme, or artifice to defraud an actual or prospective
25 investor-client; (b) engaged in a transaction, practice, or

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1 course of business which operated as a fraud and deceit upon
2 those investors or prospective investors; or (c) engaged in an
3 act, practice, and course of business that was fraudulent,
4 deceptive, and manipulative. Any one of these types of alleged
5 fraudulent conduct, if proven by the government beyond a
6 reasonable doubt, is sufficient. However, you must be
7 unanimous as to which type of unlawful conduct, if any, has
8 been proven by the government. I have previously defined the
9 terms "device, scheme, or artifice to defraud," and you are to
10 follow those instructions here.

11 With respect to Count Three, the third element the
12 government must prove beyond a reasonable doubt is that Stephen
13 Maiden devised or participated in the alleged device, scheme,
14 or artifice to defraud, or engaged in the allegedly fraudulent
15 transaction, practice, or course of business, knowingly,
16 willfully, and with the specific intent to defraud. I have
17 already defined "knowingly" and "willfully," and you are to
18 apply those same definitions here. In order to prove that
19 Maiden acted with the intent to defraud, however, the
20 government need only prove that he acted with an intent to
21 deceive his clients. The government need not show that he
22 acted with an intent to cause harm to those clients.

23 With respect to Count Three, the fourth element the
24 government must prove beyond a reasonable doubt is that Stephen
25 Maiden knowingly used or caused to be used the mails or an

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1 instrumentality of interstate commerce, such as interstate
2 telephone or wire communications, in furtherance of the alleged
3 scheme to defraud, or the allegedly fraudulent conduct
4 specified in the indictment.

5 The term "instrumentality in interstate commerce"
6 means instruments, devices and means of conducting trade,
7 commerce, transportation, or communication among any two
8 states, or between this country and a foreign country. It is
9 not necessary that an investment adviser be directly or
10 personally involved in mailing or use of the interstate or
11 international instrumentality. In an investment adviser was an
12 active participant in the scheme and took steps or engaged in
13 conduct which he knew or could reasonably foresee would
14 naturally and probably result in the use of the mails or
15 interstate wires, then you may find that he caused them to be
16 used.

17 The items allegedly sent through the mails or
18 communicated through the instrumentality of interstate commerce
19 need not have contained fraudulent material or anything
20 criminal or objectionable, nor need they be central to the
21 execution of the alleged scheme to defraud or allegedly
22 fraudulent conduct. All that is required is that the use of
23 the mails or instrumentalities must bear some relation to the
24 object of the alleged scheme or conduct.

25 If the government proves each of the first four

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1 elements described above beyond a reasonable doubt, it will
2 have established that Stephen Maiden committed investment
3 adviser fraud. In order for you to find Mr. Amanat guilty of
4 aiding and abetting Maiden's commission of this crime, however,
5 the government must prove a fifth element beyond a reasonable
6 doubt -- namely, that Mr. Amanat aided and abetted Stephen
7 Maiden by (1) willfully and knowingly associating himself in
8 some way with Maiden's crime; (2) willfully and knowingly
9 seeking by some act to help make Maiden's crime succeed; and
10 (3) doing so with the specific intent to deceive Maiden's
11 clients.

12 As I instructed you with regard to Count Two, a
13 defendant's "good faith," as I previously defined that term, is
14 a complete defense to a charge of aiding and abetting
15 investment adviser fraud. All of the instructions I previously
16 gave you concerning the defendant's assertion of good faith
17 apply with equal force here.

18 Count Four of the indictment charges that from in or
19 about December 2008 through in or about September 2011,
20 Mr. Tuzman, Mr. Amanat, and Stephen Maiden conspired to commit
21 securities fraud by manipulating KITDigital stock by
22 artificially inflating the stock's share price and trading
23 volume.

24 To prove the securities fraud conspiracy charged in
25 Count Four of the indictment, the government must prove each of

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1 the following elements beyond a reasonable doubt:

2 First, that the conspiracy charged in Count Four
3 existed -- that is, that from in or about December 2008 through
4 in or about September 2011, an agreement or understanding
5 between two or more people existed to commit securities fraud;

6 Second, that the defendant you are considering
7 willfully and knowingly joined and participated in that
8 conspiracy during the applicable time period;

9 Third, that during the existence of the conspiracy,
10 one of the conspirators, not necessarily the defendant you are
11 considering, knowingly committed at least one overt act in
12 furtherance of the conspiracy in the Southern District of New
13 York.

14 In addition to proving beyond a reasonable doubt all
15 of these elements of conspiracy to commit securities fraud as I
16 have explained them to you, the government must prove that an
17 act in furtherance of the alleged conspiracy took place in the
18 Southern District of New York. As I have instructed you as to
19 venue and venue alone, the government's burden is proof by a
20 preponderance of the evidence -- more likely than not.

21 I have previously instructed you generally on the
22 requirements for finding a criminal conspiracy, and on the
23 government's obligation to show an unlawful agreement and a
24 defendant's willful and knowing participation in the charged
25 conspiracy. My previous instructions apply with equal force

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1 here.

2 In Count Four, however, the government charges that an
3 objective of the conspiracy was securities fraud. Moreover,
4 before convicting on Count Four, the jury must find that the
5 government has proven that a conspirator committed an overt act
6 in furtherance of the charged conspiracy. Accordingly, I will
7 instruct you on the elements of securities fraud, and on what
8 the government must prove to establish that a conspirator
9 committed an overt act in furtherance of the conspiracy charged
10 in Count Four.

11 In order to prove that a defendant is guilty of the
12 securities fraud conspiracy charged in Count Four, the
13 government must establish beyond a reasonable doubt that that
14 defendant agreed with others to commit securities fraud.

15 Federal law provides that, it shall be unlawful for
16 any person, directly or indirectly, by the use of any means or
17 instrumentality of interstate commerce or of the mails, or of
18 any facility of any national securities exchange...to use or
19 employ in connection with the purchase or sale of any security
20 registered on a national securities exchange, or any security
21 not so registered,...any manipulative or deceptive device or
22 contrivance in contravention of such rules and regulations as
23 the Securities and Exchange Commission may describe as
24 necessary or appropriate in the public of interest or for the
25 protection of investors.

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1 Federal law also provides that it shall be unlawful
2 for any person, directly or indirectly, by use of any means of
3 instrumentality of interstate commerce, or of the mails or of
4 any facility of any national securities exchange (a) to employ
5 a device, scheme, or artifice to defraud; (b) to make any
6 untrue statement of a material fact or omit to state a material
7 fact necessary in order to make the statements made, in light
8 of the circumstances under which they were made, not
9 misleading; or (c) to engage in any act, practice, or course of
10 business which operates, or would operate, as a fraud or deceit
11 upon any person, in connection with the purchase or sale of any
12 security.

13 In order to prove that a defendant is guilty of
14 securities fraud, the government must establish beyond a
15 reasonable doubt the following three elements:

16 First, that in connection with the purchase or sale of
17 a security, the defendant did any one or more of the following:

18 (1) employed a device, scheme or artifice to defraud
19 or (2) made an untrue statement of material fact or omitted to
20 state a material fact that made what was said, under the
21 circumstances, misleading; or (2) engaged in an act, practice,
22 or course of business that operated, or would operate, as a
23 fraud or deceit upon a purchaser or seller.

24 Second, that the defendant acted willfully, knowingly
25 and with the intent to defraud; and

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1 Third, that the defendant used, or caused to be used,
2 any means or instruments of transportation or communication in
3 interstate commerce or the use of the mails in furtherance of
4 the fraudulent conduct.

5 I will now instruct you on each of these elements in
6 more detail.

7 The first element of securities fraud that the
8 government must prove beyond a reasonable doubt is that, in
9 connection with the purchase or sale of a security, a defendant
10 did any one of the following:

11 (1) employed an device, scheme, or artifice to
12 defraud;

13 (2) made an untrue statement of material fact or
14 omitted to state a material fact that made what was said, under
15 the circumstances, misleading; or

16 (3) engaged in an act, practice, or course of business
17 that operated, or would operate, as a fraud or deceit upon a
18 purchaser or seller.

19 As an initial matter, you should be aware that
20 KITDigital's shares are a "security" within the meaning of
21 federal law.

22 In connection with proving a fraudulent act, it is not
23 necessary for the government to prove all three types of
24 unlawful conduct in connection with the purchase or sale of a
25 security. Any one will be sufficient to satisfy this element

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1 of the offense. You must, however, be unanimous as to which
2 type of unlawful conduct was the alleged object of the
3 conspiracy.

4 I will now plain explain a number of terms used in
5 this provision. A "device, scheme or artifice to defraud" is
6 merely a plan for the accomplishment of any fraudulent
7 objective. "Fraud" is a general term that embraces all efforts
8 and means that individuals devise to take unfair advantage of
9 others. The law that the defendants are alleged to have
10 violated prohibits all kinds of manipulative and deceptive
11 acts. The fraudulent or deceitful conduct alleged need not
12 relate to the investment value of the securities involved in
13 this case.

14 A statement, representation, claim or document is
15 false if it is untrue when made and was known to be untrue by
16 the person making it or causing it to be made. A
17 representation or statement is fraudulent if it is made with
18 the intent to deceive. The concealment of material facts in a
19 manner that makes what is said or represented deliberately
20 misleading may also constitute false or fraudulent statements
21 under the statute. The failure to disclose information may
22 also constitute a fraudulent representation if the defendant
23 was under a legal, professional or contractual duty to make
24 such a disclosure, the defendant actually knew such disclosure
25 was required to be made, and the defendant failed to make such

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1 disclosure with the intent to defraud.

2 The deception need not be based upon spoken or written
3 words alone. The arrangement of the words, or the
4 circumstances in which they are used, may convey the false and
5 deceptive appearance. If there is deception, the manner in
6 which it is accomplished does not matter.

7 You cannot find that the government has proven the
8 first element unless you find that the defendant you are
9 considering participated, or agreed to participate, in
10 fraudulent conduct that was "in connection with" a purchase or
11 sale of securities. The requirement that the fraudulent
12 conduct be in connection with the purchase or sale of
13 securities is satisfied so long as there was some nexus or
14 relation between the allegedly fraudulent conduct and the sale
15 or purchase of securities. Fraudulent conduct may be "in
16 connection with" the purchase or sale of securities if you find
17 that the alleged conduct "touched upon" a securities
18 transaction. You need not find that the defendant you are
19 considering actually participated in any specific purchase or
20 sale of a security if you find that the defendant participated,
21 or agreed to participate, in the fraudulent conduct that was
22 "in connection with" a "purchase or sale" of securities.

23 It is no defense to an alleged scheme to defraud that
24 the defendants were not involved in the scheme from its
25 inception or played only a minor role with no contact with the

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1 investors and purchasers of the securities in question. Nor is
2 it necessary for you to find that the defendants were the
3 actual sellers of the securities. It is sufficient if the
4 defendants participated in the scheme or fraudulent conduct
5 that involved the purchase or sale of securities. By the same
6 token, the government need not prove that the defendant
7 personally made the misrepresentation or that the defendant
8 omitted the material fact. It is sufficient if the government
9 establishes that the defendant caused the statement to be made
10 or the fact to be omitted.

11 With regard to the misrepresentations and omissions
12 that the government alleges, you must determine whether the
13 statements were true or false when made, and, in the case of
14 alleged omissions, whether the omissions were misleading.

15 If you find that the government has established beyond
16 a reasonable doubt that a statement was false, or that a
17 statement was omitted that rendered the statements that were
18 made misleading, you must next determine whether the statement
19 or omission was material under the circumstances.

20 Material information in this context is information
21 that a reasonable investor would have considered significant in
22 deciding whether to buy, sell or hold securities, and at what
23 price to buy or sell securities. Put another way, there must
24 be a substantial likelihood that the information at issue would
25 have been viewed by the reasonable investor as having

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1 significantly altered the total mix of information then
2 available. When you assess whether a piece of information is
3 material, you may consider, among other things, whether that
4 information did or would have caused the price of KITDigital's
5 stock to increase or drop.

6 Your consideration of the element of materiality must
7 be based on the facts existing at the time the actions alleged
8 by the government were committed; materiality cannot be judged
9 in hindsight.

10 In determining whether certain information is
11 material, you must consider this issue from the perspective of
12 a reasonable investor -- and not from the perspective of
13 KITDigital employees or other individuals who may possess
14 information and perspectives different than a reasonable
15 investor. Any testimony that you may have heard with respect
16 to whether a particular fact would or would not have been
17 important to him or to investors in general reflect that
18 witness's individual views. Although you may consider such
19 testimony, it is not controlling. It is for you to determine
20 whether a particular fact would have been significant to a
21 reasonable investor in making an investment decision.

22 In considering whether a statement or omission was
23 material, let me caution you that it is not a defense if the
24 material misrepresentation or omission would not have deceived
25 a person of ordinary intelligence. Once you find that the

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1 offense involved the making of material misrepresentations or
2 omissions of material facts, it does not matter whether the
3 intended victims were gullible buyers or sophisticated
4 investors, because the securities law affect gullible and
5 unsophisticated as well as the experienced investor.

6 Nor does it matter whether the alleged unlawful
7 conduct was successful or not, or whether the defendant
8 profited or received any benefit as a result of the alleged
9 scheme. Success is not an element of the crime charged. If
10 you find that the defendant you are considering expected to or
11 did profit from the alleged scheme, however, you may consider
12 that in relation to the element of intent, which I will discuss
13 in a moment.

14 With respect to the first element of conspiracy to
15 commit securities fraud, the government claims that Mr. Tuzman
16 and Mr. Amanat conspired to manipulate the market for
17 KITDigital stock by arranging for Stephen Maiden to purchase
18 KITDigital stock in a manner that was intended to artificially
19 inflate the price of KITDigital stock and to artificially
20 increase trading volume in KITDigital stock.

21 In connection with this first element, the government
22 must prove that Mr. Tuzman and Mr. Amanat agreed to engage in
23 intentional and willful conduct designed to deceive or defraud
24 KITDigital investors by artificially distorting the price of
25 KITDigital stock, such that the price of that stock was not

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1 determined by the natural interplay of supply and demand. The
2 purchase or sale of stock may, of course, be engaged in for
3 entirely legitimate economic reasons. Accordingly, the
4 government must prove beyond a reasonable doubt that each
5 defendant agreed to engage in conduct with the sole intent to
6 (1) create a false impression of market activity regarding
7 KITDigital stock, and (2) artificially distort the price of
8 KITDigital stock, rather than for legitimate investment
9 purposes. Manipulative intent must be demonstrated as to each
10 defendant, but can be inferred from conduct that a defendant
11 engaged in.

12 The second element of securities fraud that the
13 government must establish beyond a reasonable doubt is that the
14 defendant participated in the scheme to defraud knowingly,
15 willfully, and with the intent to defraud. My previous
16 instructions concerning "knowingly" and "willfully" apply with
17 equal force here.

18 In the context of securities laws, "intent to defraud"
19 means to act knowingly and with the intent to deceive.

20 Since an essential element of securities fraud is
21 intent to defraud, good faith, as I have previously defined
22 that term, is a complete defense to a charge of securities
23 fraud. My prior instructions concerning good faith apply with
24 equal force here.

25 The third element of securities fraud that the

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1 government must prove beyond a reasonable doubt is that the
2 defendant knowingly used, or caused to be used, an
3 instrumentality of interstate commerce in furtherance of the
4 scheme to defraud.

5 Examples of instrumentalities of interstate commerce
6 include an interstate telephone call, use of the mails, or use
7 of a facility of a national securities exchange, such as a
8 stock or options trade made on the NASDAQ, the New York Stock
9 Exchange, or over-the-counter markets.

10 The government need not prove that a defendant was
11 directly or personally involved in the use of an
12 instrumentality of interstate commerce. If the defendant was
13 an active participant in the scheme and took steps or engaged
14 in conduct that he knew or could reasonably foresee would
15 naturally and probably result in the use of an instrumentality
16 of interstate commerce, this element would be satisfied.

17 Nor is it necessary that the items sent through the
18 mails or communicated through an instrumentality of interstate
19 commerce did or would contain the fraudulent material, or
20 anything criminal or objectionable.

21 The use of the mails or instrumentality of interstate
22 commerce need not be central to the execution of the scheme or
23 even be incidental to it. All that is required is that the use
24 of the mails or instrumentality of interstate commerce bear
25 some relation to the object of the scheme or fraudulent

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1 conduct.

2 Moreover, the actual purchase or sale of a security
3 need not be accompanied by the use of the mails or an
4 instrumentality of interstate commerce, so long as the mails or
5 instrumentality of interstate commerce are used in furtherance
6 of the scheme and the defendant is still engaged in actions
7 that are part of a fraudulent scheme when the mails or the
8 instrumentalities of interstate commerce are used.

9 The third element of Count Four that the government
10 must prove beyond a reasonable doubt is the commission of an
11 overt act by the defendant you are considering or a
12 coconspirator. To sustain its burden of proof, the government
13 must show beyond a reasonable doubt that at least one overt act
14 was committed in furtherance of the conspiracy by at least one
15 of the coconspirators -- but not necessarily the defendant you
16 are considering.

17 The purpose of the overt act requirement is clear.
18 There must have been something more than mere agreement; some
19 overt step or action must have been taken by at least one of
20 the conspirators in furtherance of the conspiracy. The
21 government must prove beyond a reasonable doubt that a member
22 of the conspiracy charged in Count Four took some step or
23 action in furtherance of the conspiracy in the Southern
24 District of New York during the life of the conspiracy.

25 In order for the government to satisfy the overt act

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1 requirement, it is not necessary for it to prove any particular
2 overt act, or even that the defendant you are considering
3 committed an overt act. It is sufficient for the government to
4 show that the defendant you are considering or one of his
5 alleged coconspirators knowingly committed an overt act in
6 furtherance of the conspiracy.

7 Although a number of overt acts are alleged in the
8 indictment, in order to satisfy the overt act requirement, the
9 government is not required to prove any of these alleged overt
10 acts. An overt act is sufficient, whether alleged in the
11 indictment or not, if you are convinced beyond a reasonable
12 doubt that it was committed by a coconspirator in furtherance
13 of the conspiracy, while the conspiracy was in existence, and
14 within the Southern District of New York.

15 However, you must all agree on at least one overt act
16 that a conspirator committed to satisfy this element. In other
17 words, it is not sufficient for you to agree that some overt
18 act was committed without agreeing on which overt act was
19 committed. You must all agree on the same overt act.

20 You should also bear in mind that the overt act,
21 standing alone, may be an innocent, lawful act. What matters
22 is whether the overt act is a step in carrying out, promoting,
23 aiding or assisting the conspiratorial scheme.

24 Finally, there is an additional element that the
25 government must prove beyond a reasonable doubt with respect to

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1 the conspiracy charged in Count Four. That element relates to
2 timing. The government must prove beyond a reasonable doubt
3 that Mr. Tuzman, Mr. Amanat, or one of their alleged
4 coconspirators committed at least one overt act in furtherance
5 of the charged conspiracy to manipulate the market for
6 KITDigital's stock after August 12, 2010.

7 Count Four of the indictment charges that from in or
8 about December 2008 through in or about September 2011,
9 Mr. Tuzman and Mr. Amanat conspired to commit securities fraud
10 in connection with a scheme to manipulate the shares of
11 KITDigital by artificially inflating the share price and
12 trading volume of KITDigital shares. The government is not
13 required to prove that the alleged conspiracy started and ended
14 on any specific date. It is sufficient if you find that the
15 conspiracy was formed and that it existed for some time within
16 or around the dates set forth in the indictment.

17 Count Five of the indictment charges that between in
18 or about 2009 and in or about March 2011, Mr. Tuzman and others
19 conspired to commit wire fraud. The wire fraud conspiracy
20 charged in Count Five relates to an alleged scheme to defraud
21 KITDigital's shareholders by failing to disclose that
22 KITDigital's investments with Maiden Capital were not part of
23 an arm's-length relationship, but rather were related-party
24 transactions entered into for an improper purpose. The
25 government claims that Mr. Tuzman falsely represented to

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1 KITDigital that a \$250,000 KITDigital investment with Maiden
2 Capital was a legitimate investment, whereas Mr. Tuzman and
3 Maiden had agreed it was instead to be paid to Mr. Tuzman for
4 his personal use.

5 In order to prove the wire fraud conspiracy charged in
6 Count Five, the government must prove each of the following
7 elements beyond a reasonable doubt:

8 First, that the conspiracy charged in Count Five
9 existed -- that is, that from in or about 2009 through in or
10 about March 2011, an agreement or understanding between two or
11 more people existed to commit wire fraud; and

12 Second, that Mr. Tuzman willfully and knowingly joined
13 or participated in that conspiracy during the time period
14 charged in Count Five.

15 I instructed you on the elements of conspiracy to
16 commit wire fraud in connection with Count One. Those
17 instructions apply with equal force here.

18 In addition to proving beyond a reasonable doubt all
19 of these elements of conspiracy to commit wire fraud as I have
20 explained them to you, the government must prove that an act in
21 furtherance of the alleged conspiracy occurred within the
22 Southern District of New York. As I instructed you, as to
23 venue and venue alone, the government's burden is proof by a
24 preponderance of the evidence -- more likely than not.

25 As I instructed you in connection with the wire fraud

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1 conspiracy charged in Count One, in order to prove that the
2 defendant committed wire fraud, the government must establish
3 beyond a reasonable doubt the following three elements:

4 First, that in or about the time period alleged in the
5 indictment, there was a scheme or artifice to defraud others of
6 money and property by false or fraudulent pretenses,
7 representations, or promises;

8 Second, that the defendant knowingly and willfully
9 devised or participated in the scheme or artifice to defraud,
10 with knowledge of its fraudulent nature and with a specific
11 intent to defraud; and

12 Third, that in the execution of that scheme, the
13 defendant used, or caused the use by others of, interstate or
14 international wires.

15 I have already defined each of these elements in my
16 instructions concerning Count One. Those instructions apply
17 with equal force here.

18 The indictment alleges that the wire fraud conspiracy
19 charged in Count Five took place from at least in or about 2009
20 up to in or about March 2011. The government is not required
21 to prove that the alleged conspiracy started and ended on any
22 specific date. It is sufficient if you find that the
23 conspiracy was formed and that it existed for some time within
24 or around the dates set forth in the indictment.

25 Count Six: Conspiracy to Commit Securities Fraud,

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1 Make False Statements in SEC Filings, and Make False Statements
2 to Auditors.

3 Count Six of the indictment charges that, from in or
4 about 2009 through in or about April 2012, Mr. Tuzman conspired
5 to: (1) commit securities fraud; (2) make false statements in
6 KITDigital's annual and quarterly reports filed with the
7 Securities and Exchange Commission; and (3) make false
8 statements to KITDigital's auditors.

9 In order to prove the conspiracy charged in Count Six,
10 the government must prove each of the following elements beyond
11 a reasonable doubt:

12 First, that the conspiracy charged in Count Six
13 existed -- that is, that from in or about 2009 through in or
14 about April 2012, an agreement or understanding between two or
15 more people existed to commit the conspiracy charged in Count
16 Six;

17 Second, that Mr. Tuzman willfully and knowingly joined
18 or participated in that conspiracy during the applicable time
19 period;

20 Third, that during the existence of the conspiracy,
21 one of the conspirators, not necessarily Mr. Tuzman, knowingly
22 committed at least one overt act in furtherance of the
23 conspiracy in the Southern District of New York.

24 I have previously instructed you generally on the
25 elements of criminal conspiracy and on the government's burden

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1 to prove the unlawful agreement and a defendant's membership in
2 the charged conspiracy. All of those instructions apply with
3 equal force here.

4 Count Six charges Mr. Tuzman with participating in a
5 conspiracy with three distinct objectives: securities fraud;
6 causing KITDigital to make misstatements in filings with the
7 Securities and Exchange Commission; and making misstatements to
8 KITDigital's auditors.

9 In order to convict on Count Six, you need not find
10 that Mr. Tuzman conspired to achieve all three objectives. The
11 government must prove, however, that Mr. Tuzman and his
12 conspirators had a conspiratorial agreement as to at least one
13 of these objectives, and you must unanimously agree on which
14 objective that was. You cannot find Mr. Tuzman guilty on Count
15 Six unless you unanimously agree as to at least one objective
16 alleged in Count Six.

17 I will now provide instructions regarding each of the
18 three objectives alleged in Count Six.

19 The first alleged objective of the conspiracy charged
20 in Count Six is securities fraud. I instructed you on the
21 elements of securities fraud in connection with Count Four, and
22 you should follow those instructions here. I do want to
23 expand, however, on my instructions as to what is material.

24 In assessing whether a misstatement or omission is
25 material, both quantitative and qualitative factors should be

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Charge

1 considered. In assessing whether a stated or omitted fact is
2 quantitatively material, you should consider the financial
3 magnitude of the misstatement or omission. Under this inquiry,
4 an omission or misstatement of an item in a financial report is
5 quantitatively material if, in light of surrounding
6 circumstances, the magnitude of the item is such that it is
7 probable that the judgment of a reasonable person relying upon
8 the report would have been changed or influenced by the
9 inclusion or correction of the item.

10 However, the magnitude of a misstatement is only the
11 beginning of an analysis of materiality. You should also
12 consider whether qualitative factors make a misstatement or
13 omission material. With respect to financial statements,
14 qualitative factors may cause misstatements of quantitatively
15 small amounts to be material.

16 In assessing whether a misstatement or omission is
17 qualitatively material, you may consider, among other factors:
18 whether the misstatement masks a change in earnings or other
19 trends; whether the misstatement hides a failure to meet
20 analysts' consensus expectations for the enterprise; whether
21 the misstatement changes a loss into income or vice versa;
22 whether the misstatement affects the registrant's compliance
23 with regulatory requirements; whether the misstatement has the
24 effect of increasing management's compensation -- for example,
25 by satisfying requirements for the award of bonuses or other

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1 forms of incentive compensation; whether the misstatement
2 involves concealment of an unlawful transaction.

3 This is not an exhaustive list.

4 The second alleged objective of the conspiracy charged
5 in Count Six is making, or causing to be made, false statements
6 in reports and documents required to be filed with the
7 Securities and Exchange Commission.

8 Federal law provides that any person who willfully and
9 knowingly makes, or causes to be made, any statement in any
10 application, report, or document required to be filed under
11 this chapter or any rule or regulation thereunder...which
12 statement was false or misleading with respect to any material
13 fact shall be guilty of a federal crime.

14 This statute makes it unlawful to willfully make
15 materially false and misleading statements in applications,
16 reports, and documents required to be filed with the SEC.

17 To establish that Mr. Tuzman conspired to violate this
18 provision, the government must prove each of the following
19 elements:

20 First, that federal law required KITDigital to file
21 annual and quarterly reports with the SEC; and

22 Second, that Mr. Tuzman agreed to knowingly and
23 willfully make, or cause to be made, a materially false or
24 misleading statement in an annual or quarterly report filed
25 with the SEC.

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1 The government must first show that federal law
2 required KITDigital to file annual and quarterly reports with
3 the SEC. I instruct you now that a corporation that has
4 publicly traded securities is required to file annual reports
5 on Form 10-K, quarterly reports on Form 10-Q, and reports on
6 Form 8-K regarding, among other things, any public announcement
7 or release that discloses material nonpublic information
8 regarding the company's results of operations or financial
9 condition for a completed quarterly or annual fiscal period.
10 Thus, if you conclude that shares of KITDigital were publicly
11 traded, the company was required to file these reports with the
12 SEC.

13 (Continued on next page)

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1 THE COURT: The government must next prove that
2 Mr. Tuzman agreed to knowingly and willfully make or cause to
3 be made materially false and misleading statements in the SEC
4 report you are considering.

5 As I have instructed you, a statement or
6 representation is false if it was untrue when made and known at
7 the time to be untrue by the person making it or causing it to
8 be made. A statement is misleading if it is either an untrue
9 statement as to a material fact or if it omits to state a
10 material fact necessary in order to make the statement made in
11 light of the circumstances under which they were made not
12 misleading.

13 I have defined the term "material" for you in
14 connection with Count Four in connection with this count. I
15 have also previously defined the terms "knowingly" and
16 "willfully." Those same definitions apply here.

17 To establish this element, the government need not
18 prove that Mr. Tuzman himself physically made or otherwise
19 personally prepared the SEC reports in question. It is
20 sufficient if the government proves beyond a reasonable doubt
21 that Mr. Tuzman causes materially false information to be filed
22 by some person.

23 The third illegal objective of the conspiracy charged
24 in Count Six is making or causing to be made materially false
25 and misleading statements to KIT Digital's auditors.

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1 Federal law provides that no director or officer of an
2 issuer shall, directly or indirectly, make or cause to be made
3 a materially false or misleading statement, or, two, omit to
4 state or cause another person to omit to state any material
5 fact necessary in order to make statements made, in light of
6 the circumstances under which such statements were made, not
7 misleading to an accountant in connection with, one, any audit,
8 review or examination of the financial statements of the issuer
9 required to be made pursuant to this subpart, or two, the
10 preparation or filing of any document or report required to be
11 filed with the SEC. Federal law also provides that anyone
12 violating this provision of is guilty of a crime.

13 Accordingly, to prove a defendant is guilty of the
14 substantive offense of making false statements to auditors, the
15 government must establish the following elements beyond a
16 reasonable doubt:

17 First, that the defendant was a director or officer of
18 a corporation that publicly traded securities; second, that the
19 defendant made or caused to be made a materially false or
20 misleading statement to an auditor, either in connection with
21 an audit or an examination of the company's financial
22 statements or the preparation or filing of any document or
23 report required to be filed with the SEC; and third, that the
24 defendant acted willfully.

25 "Willfully" has the same meaning I provided to you

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1 earlier. A person acts willfully if he acts deliberately and
2 with the intent to do something that the law forbids, that is,
3 with a bad purpose to disobey or disregard the law.

4 I have also already described for you the concepts of
5 falsity and materiality and have explained that a public
6 company is required to file financial statements with the SEC.
7 You should apply those same instructions here.

8 Count Six of the indictment charges that Kaleil Isaza
9 Tuzman conspired to commit securities fraud, make false
10 statements in SEC filings, and make false statements to
11 auditors in connection with the scheme to deceive KIT Digital
12 shareholders members of the investing public, KIT Digital's
13 auditors, and others from in or about 2009 through in or about
14 April 2012.

15 The government is not required to prove that the
16 alleged conspiracy started and ended on any specific date. It
17 is sufficient if you find that the conspiracy was formed and
18 that it existed for some time within or around the dates set
19 forth in the indictment.

20 With respect to Counts One, Four and Six, Mr. Tuzman
21 and Mr. Amanat contend the government has not proven the single
22 conspiracy charge in each count, but, at best, has offered
23 proof of several separate and independent conspiracies with
24 different members. Whether there existed a single unlawful
25 agreement or many such agreements, or indeed no agreement at

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1 all, is a question of fact for you, the jury, to determine in
2 accordance with my instructions on the law.

3 When two or more people join together to further one
4 common unlawful design or purpose, a single conspiracy exists.
5 By way of contrast, multiple conspiracies exist when there are
6 separate unlawful agreements to achieve distinct purposes. You
7 may find that there was a single conspiracy despite the fact
8 that there were changes in either personnel or activities or
9 both, so long as you find that some of the co-conspirators
10 continued to act for the entire duration of the conspiracy for
11 the purpose or purposes charged in the count you are
12 considering. The fact that the members of a conspiracy are not
13 always identical does not necessarily imply that separate
14 conspiracies exist.

15 On the other hand, if you find that the single
16 conspiracy charged in the count you are considering did not
17 exist, you cannot find any defendant guilty of the single
18 conspiracy charged in that count. That is so even if you find
19 that some conspiracy, other than the one charged in the count
20 you are considering, existed even though the purpose of both
21 conspiracies may have been same, and even though there may have
22 been some overlap in membership.

23 Similarly, if you find that a particular defendant was
24 a member of another conspiracy, and not the one charged in the
25 count you are considering, then you must acquit the defendant

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1 on that conspiracy charge.

2 As you know, Omar Amanat is charged in Counts One
3 through Three with wire fraud, wire fraud conspiracy, and
4 aiding and abetting investment advisor fraud by Stephen Maiden.
5 As to each alleged crime charged in counts one through three,
6 the indictment alleges that Mr. Amanat's criminal conduct took
7 place between March 2009 and 2012.

8 As you also know, Mr. Tuzman is not charged in Counts
9 One through Three.

10 In connection with Counts One through Three, you heard
11 evidence regarding alleged events that took place in 2008 and
12 early 2009. Some of this evidence was in the form of emails.
13 Proof regarding events that took place in 2008 and early 2009
14 is outside the time period charged in Counts One through Three.
15 This evidence was admitted for the limited purpose of providing
16 background to the crimes alleged in this case, and you may not
17 rely on this evidence for any other purpose.

18 I want to emphasize that Mr. Amanat and Mr. Tuzman are
19 not charged in this case with defrauding Mr. Maiden.
20 Mr. Amanat is also not charged in Counts One through Three with
21 any fraudulent activity that took place before March 2009.

22 Mr. Amanat is also not charged with defrauding KIT
23 Digital. He is charged with allegedly working with Mr. Maiden
24 to defraud Maiden Capital investors beginning in March of 2009.

25 As I have instructed throughout the case, the

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1 background evidence admitted in this case was admitted for
2 limited purposes. You may consider this evidence only for the
3 purpose of deciding whether a defendant had the state of mind,
4 knowledge, or intent necessary to commit the crimes charged in
5 the indictment or had a motive to commit the crimes charged in
6 the indictment.

7 The defendants are not on trial for committing any of
8 the acts that predate the time period of the charged crimes.
9 You may not consider this background evidence as a substitute
10 for proof that the defendants committed the crimes charged.
11 You may not consider this evidence as proof that the defendant
12 has a bad character or any propensity to commit crimes. You
13 also are prohibited from using this evidence to conclude that
14 because the defendant may have committed some other act, he
15 must have also committed the crimes charged in the indictment.

16 Final instructions concerning procedure.

17 If, during your deliberations, you have any doubt as
18 to any of the testimony, you will be permitted to request that
19 portions of the trial transcript be sent back to you in the
20 jury room. If you want any testimony, please remember that it
21 is not always easy to locate what you might want, so be as
22 specific as you possibly can be in requesting portions of the
23 testimony. All of the documentary exhibits that have been
24 received in evidence will be sent into the jury room. You may
25 also request non-documentary evidence, and that will be shown

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1 to you here in the courtroom.

2 Certain exhibits that are too voluminous for printing,
3 such as trading records and Excel spreadsheets, will be made
4 available to you here in the courtroom upon your request.

5 An index reflecting materials received in evidence
6 will be provided you to.

7 If you want any further explanation of the law as I
8 have explained it to you, you may also request that. As I
9 noted earlier, however, you may all take into the jury room
10 your copy of these instructions.

11 Any communication to me should be made in writing,
12 signed by your foreperson, include the date and time, and be
13 given to one of the marshals.

14 Please make any notes as clear and precise as
15 possible. Do not tell me or anyone else how the jury stands on
16 any issue until after a unanimous verdict is reached.

17 Your function is to weigh the evidence in this case
18 and to decide whether the government has proven beyond a
19 reasonable doubt each of the essential elements of the crimes
20 with which the defendants are charged. If the government has
21 succeeded in meeting its burden, your verdict should be guilty.
22 If it has failed do so, it should be not guilty. You must base
23 your verdict solely on the evidence and these instructions as
24 to the law, and you are obligated under your oath as jurors to
25 follow the law as I instruct you, whether you agree or disagree

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1 with the particular law in question.

2 It is your duty as jurors to consult with one another
3 and to deliberate with a view towards reaching an agreement.
4 As you deliberate, please listen to the opinions of your fellow
5 jurors and ask for an opportunity to express your own views.
6 Every juror should be heard. No one juror should hold center
7 stage in the jury room and no one juror should control or
8 monopolize the deliberations.

9 Each of you must decide the case for yourself, but you
10 should do so only after a consideration of the case with your
11 fellow jurors, and you should not hesitate to change an opinion
12 when convinced that it is erroneous. Discuss and weigh your
13 respective opinions dispassionately, without regard to sympathy
14 or to prejudice or favor for either side, and adopt that
15 conclusion which in your good conscience appears to be in
16 accordance with the truth.

17 Your verdict must be unanimous as to each charge in
18 the indictment. However, you are not bound to surrender your
19 honest convictions concerning the effect or weight of the
20 evidence for mere the purpose of returning a verdict or solely
21 because of the opinion of other jurors. Each of you must make
22 your own decision about the proper outcome of this case based
23 on your consideration of the evidence and your discussions with
24 your fellow jurors. No juror should surrender his or her
25 conscientious beliefs solely for the purpose of returning a

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1 unanimous verdict.

2 Remember at all times you are not partisans, you are
3 judges, judges of the facts. Your sole interest is to
4 determine whether the government has proven the defendants'
5 guilt beyond a reasonable doubt. If you are divided, do not
6 report how the vote stands, and if you have reached a verdict,
7 do not report what it is until you are asked in open court.

8 A number of you have taken notes during the trial.
9 Your notes are to be used solely to assist you and are not to
10 substitute for your recollection of the evidence in the case.
11 Any notes that you may take are not evidence. The fact that a
12 particular juror has taken notes entitles that juror's views to
13 no greater weight than those of any other juror, and your notes
14 are not to be shown to any other juror during your
15 deliberations.

16 I have prepared a verdict form for you to use in
17 recording your decision. Please use that form to report your
18 verdict.

19 I referred a moment ago to a foreperson. It is
20 customary for juror number one to serve as the foreperson, and
21 that is what we will do here. The foreperson doesn't have any
22 more power or authority than any other juror, and her vote or
23 opinion doesn't count for any more than any other juror's vote
24 or opinion. The foreperson is merely your spokesperson to the
25 Court. She will send out any notes and when the jury has

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1 reached a verdict, she will notify the marshal that the jury
2 has reached a verdict, and you will come into open court and
3 deliver your verdict.

4 After you have reached a verdict, your foreperson will
5 fill in the form that has been given to you, sign and date it,
6 and advise the marshal outside your door that you are ready to
7 return to the courtroom. Each of you must be in agreement with
8 the verdict, which is announced in court. Once your verdict is
9 announced by your foreperson in open court and officially
10 recorded, it cannot ordinarily be revoked.

11 During your deliberations, all the rules of conduct
12 concerning outside influences remain in effect. As I have
13 instructed you, your verdict must be based solely on the
14 evidence presented in this courtroom. Accordingly, you are
15 still not permitted to discuss this case with anyone but your
16 fellow jurors, and you may not read anything in the newspapers
17 or over the internet or anyplace else about this case. Also,
18 do not listen or watch any reporting about this case if it
19 should be broadcast on TV or over the radio.

20 Members of the jury, that concludes my instructions.
21 I ask you to remain seated while I confer with the lawyers to
22 see if there are any additional instructions that they wish me
23 to give.

24 (At sidebar)

25 THE COURT: Are there any exceptions to the charge?

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1 MR. JACKSON: Your Honor, I'm sorry, I have one
2 request. During the rebuttal summation, while I was looking at
3 the instructions, there was an argument that Mr. Amanat owned
4 Maiden Capital. I don't believe there's any evidence to that
5 effect. So I think it could create some real confusion in
6 terms of Count Three, which is aiding and abetting investment
7 advisor fraud.

8 I would ask for a very brief instruction that just
9 says that that there is no evidence that Mr. Amanat owned
10 Maiden Capital, and that the jury should not consider that in
11 determining whether or not the government has met its burden
12 with regard to Count Three the investment advisor fraud charge.

13 MS. GRISWOLD: I believe there was testimony from
14 Mr. Maiden that he installed his wife, Mr. Amanat's wife, as
15 the managing member of Maiden Capital in that loan agreement
16 from June 2011. The managing member of Maiden Capital I think
17 is consistent with regard to the argument of ownership.

18 MR. JACKSON: I don't think so. And Mr. Maiden
19 specific's testimony was that she was installed for about four
20 days as the management member where he made it clear it was
21 done in order to just to give some visibility to whether or not
22 a particular transaction had been completed. He conceded that
23 immediately.

24 So either way, that's not Mr. Amanat, that's Helena
25 Houdova. There's no evidence that Mr. Amanat ever owned Maiden

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1 Capital. It's not a major point, but it makes a big difference
2 in terms of Count Three, investment advisor fraud, and the jury
3 may be very well confused and think Mr. Amanat can be held
4 liable as an investment advisor, which he can't.

5 THE COURT: I would also comment that I believe I saw
6 something, an email, perhaps, maybe a document, I don't know,
7 in which Maiden referred to the fact that I think he meant -- I
8 think he was referring to the fact that Amanat owned everything
9 now.

10 MS. GRISWOLD: Yes, your Honor.

11 THE COURT: Was it an email?

12 MS. GRISWOLD: Well, I don't know what you're
13 remembering, but there's an attachment to one of those loan
14 agreements in June 2011, and that attachment lists all the
15 holdings of Maiden Capital at the time, and the testimony was
16 under that set of agreements that Mr. Amanat had ownership and
17 control of everything that Maiden Capital had at that point.

18 THE COURT: You don't remember that?

19 MR. JACKSON: What I remember, your Honor, is an email
20 that says Mr. Maiden says, again, you have claim to all my
21 assets, and he makes a statement like something to the effect
22 of it's weird that you won't return my phone calls.

23 However, your Honor, the problem is there are banks
24 that have claim to all of the assets of a particular entity.
25 If a loan had been made, for example, and they're secured by

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1 the loan, that doesn't make the bank the owner, and certainly
2 it wouldn't make them liable for investment advisor fraud
3 because they provided a loan that was secured by the assets of
4 the entity. And I'm not asking for a lot of factual
5 instruction, I just really am concerned that the jurors could
6 think oh, well, Mr. Williams said he's the owner, so he's an
7 investment advisor, therefore he's guilty.

8 THE COURT: So you're concerned the jury might think
9 that your client, Mr. Amanat, is actually an investment advisor
10 under the Investment Advisers Act, is that what you're saying?

11 MR. JACKSON: Yes, your Honor.

12 THE COURT: You don't contest that.

13 MS. GRISWOLD: No, your Honor.

14 THE COURT: Would you object to me instructing them
15 that the government does not contend that Omar Amanat is an
16 investment advisor?

17 MR. WILLIAMS: We think that would be appropriate.

18 MS. GRISWOLD: Yes, your Honor.

19 MR. JACKSON: Your Honor, I would be happy with that
20 if we could just add: Does not contend that he was the owner
21 of Maiden Capital or an investment adviser, because he is not
22 legally the owner and there's no evidence that he was owner of
23 the company.

24 MS. GRISWOLD: We don't agree with that. I think the
25 evidence establishes that he had de facto control. Even if it

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1 was for a small period of time, he controlled all the assets
2 and put his wife in as the managing member. That's de facto
3 control, so I think the argument in rebuttal is consistent with
4 the record. The first part of the instruction that he himself
5 is not an investment advisor, we're fine with.

6 MR. JACKSON: We defer to the wisdom of the Court, but
7 that's our argument.

8 THE COURT: So I'm going to instruct the jury now that
9 the government does not contend that Omar Amanat is himself an
10 investment advisor.

11 MR. JACKSON: Thank you, your Honor.

12 THE COURT: Okay.

13 MS. GRISWOLD: Thank you.

14 THE COURT: There's more to come.

15 (In open court)

16 THE COURT: Ladies and gentlemen, one other
17 instruction I wanted to give you after consulting with the
18 lawyers, that is the government does not contend that Omar
19 Amanat is himself an investment advisor.

20 (At sidebar)

21 THE COURT: Then what I propose to do is bring up the
22 jurors who have said that they have a problem and allocute them
23 on that problem and make sure it's still a problem; if so, with
24 respect to Mr. Sabogal, I will excuse him, but telling him that
25 he has to follow all the rules of conduct, because it's

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1 conceivable he could be asked to come back to serve on the jury
2 if one of the jurors dropped out.

3 MR. JACKSON: That's fine, Judge.

4 THE COURT: As to Mr. Morgan, based on the parties'
5 agreement, it's my intention to just excuse him without saying
6 that he will come back.

7 MS. GRISWOLD: Yes, your Honor.

8 MR. JACKSON: Yes, your Honor.

9 THE COURT: As to Ms. Mueller, I would tell her that
10 she would be excused with the understanding she has to obey the
11 rules of conduct, because there is some possibility that she
12 might be asked to come back.

13 Okay?

14 MR. WEITZMAN: Yes, your Honor.

15 MR. WILLIAMS: We agree.

16 MR. JACKSON: Yes, your Honor.

17 (Juror present)

18 THE COURT: Hi, Mr. Sabogal.

19 I received a note earlier indicating that you are
20 going to be out of the country between December 24 and
21 January 6. Is this preplanned travel that you have?

22 JUROR: Yes.

23 THE COURT: All right. Then I'm going to excuse you
24 on the following conditions: You need to follow all the rules
25 of conduct that I previously described, which means you can't

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1 expose yourself to any information about the case, you can't do
2 any investigation on your own, you can't read, listen to, or
3 look at anything about the case until we are back in touch with
4 you.

5 And the reason for that, sir, is that in the event
6 that another juror had to drop out because of health problem or
7 some other unanticipated emergency, it is conceivable that we
8 might come back to you and ask to come back. It's not a great
9 possibility of that, but it is a possibility. And so we need
10 to make sure that in the meantime you haven't exposed yourself
11 to any information about the case or gotten any information
12 about the case.

13 So I also wanted to bring up you here to thank you for
14 your participation.

15 JUROR: Thank you, guys.

16 THE COURT: It was greatly appreciated by everyone
17 here, and I regret that you won't have the opportunity to
18 participate, but I understand that you have -- I think you
19 alerted us to this during jury selection, and I probably told
20 you don't worry, there's no way we'll be doing this at
21 Christmas. So you made it known to us, and we're going to
22 honor the representation we made to you at the time that we
23 would not interfere with the trip.

24 So sir, thank you very much, and as I said, we'll be
25 back in touch with you when you're no longer subject to the

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1 limitations I mentioned.

2 JUROR: Thank you. It was an honor, guys.

3 THE COURT: Thank you, sir.

4 JUROR: Thank you.

5 (Juror not present)

6 THE COURT: Mr. Morgan, could you please approach,
7 sir.

8 (Juror present)

9 THE COURT: Mr. Morgan, how are you, sir?

10 JUROR: All right.

11 THE COURT: First of all, I have a note, Court Exhibit
12 20, which identified you as someone who couldn't return as
13 December 22nd. And then you, sir, sent a follow-up note, which
14 I marked Court Exhibit 21, which gives more information about
15 the reasons why you could not continue.

16 So what I'm prepared to tell you is that if you still
17 feel the way you set forth in your note, I am prepared to
18 excuse you at this point in time. Is it still your wish?

19 JUROR: Yes.

20 THE COURT: All right. So before excusing you, sir, I
21 wanted to tell up how much we appreciate your participation. I
22 know it was an enormous financial burden on you, and everyone
23 here very much appreciates your willingness to serve despite
24 the financial sacrifice imposed on you. So I will excuse you
25 at this time. I want to thank you, sir --

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1 JUROR: Thank you very much.

2 THE COURT: -- and you wish you the best.

3 JUROR: Thank you very much.

4 (Juror not present)

5 THE COURT: Ms. Mueller, would you please approach,
6 ma'am?

7 (Juror present)

8 THE COURT: How are you, ma'am?

9 JUROR: Good, how are you?

10 THE COURT: We have been told that you have plans to
11 be away from --

12 JUROR: Next week.

13 THE COURT: Right. And I do want to sit next week
14 after Christmas. Of course we're not going to sit on
15 Christmas, but I do want to pick up with deliberations on
16 Tuesday, assuming there's not a verdict today, because I am
17 sensitive to the burdens this case has presented on the jury.

18 And so my intention at this point, given the fact that
19 you have told us that you have pre-arranged travel between
20 December 26 and January 1st, would be to excuse you on the
21 following conditions: All the rules of conduct that I told you
22 about would remain in effect, so that you couldn't discuss the
23 case with anybody, you couldn't expose yourself to any
24 information about the case, you couldn't read, listen to, or
25 look at anything about the case until we're back in touch with

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1 you to release you of that obligation.

2 The reason for that is that in the event that another
3 juror was forced to drop out during deliberations because of a
4 health problem or some or emergency that could not have been
5 anticipated, it is possible that we would reach back out to
6 you. So if it's still your wish to be excused, I am prepared
7 to excuse you on those conditions.

8 JUROR: We have plans, so yes, I will have to be
9 excused.

10 THE COURT: So before excusing you on the conditions
11 that I mentioned, I do want to thank you on behalf of myself
12 and all the lawyers here for your attendance and your focus on
13 the trial. I regret that you won't be able to and deliberate
14 unless --

15 JUROR: Me, too.

16 THE COURT: -- someone drops out. But nonetheless, I
17 wanted you to know how much we all appreciate the sacrifices
18 that you made in order to participate as a juror on the matter.
19 So ma'am, thank you very much.

20 JUROR: Thank you very much. It was very interesting.

21 THE COURT: Thank you.

22 JUROR: Have a nice holiday.

23 (Juror not present)

24 THE COURT: So I'm going to swear -- Mike will swear
25 the marshal and I will tell the jury that it's my -- I'm going

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1 to keep them until 5 o'clock today, and if they -- I suspect
2 they want to go home at 5 o'clock, and we'll resume at 9:30 on
3 Tuesday.

4 MR. JACKSON: But your Honor will tell them they could
5 stay if they want to deliberate later today?

6 THE COURT: I was going to leave it open. Everybody
7 is okay with that?

8 MR. NAFTALIS: Of course, your Honor.

9 (In open court)

10 (Marshal sworn)

11 THE COURT: Ladies and gentlemen, in just a moment you
12 will be escorted back to the jury room. It is my intention
13 that we would have you deliberate until 5 o'clock today.
14 However, if there's a feeling on the jury to continue longer
15 than 5 o'clock today, we're at your service. You are in
16 control. I ask you to deliberate at least until 5 o'clock, but
17 if there's a consensus on the jury you would like to stay later
18 than that, let us know and we will accommodate you.

19 So with that, ladies and gentlemen, thank you very
20 much. You may begin your deliberations.

21 (Jury retired to deliberate, time noted 3:32 p.m.)

22 (Jury not present)

23 THE COURT: I need the lawyers to put together the
24 documentary exhibits going back to the jury room. With those
25 exhibits will go a copy of the verdict sheet.

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1 Do you have the exhibits prepared?

2 MS. GRISWOLD: We have the government exhibits, and I
3 believe we consulted, all sides have their own exhibits ready
4 to go.

5 THE COURT: Excellent.

6 MR. WILLIAMS: Your Honor, housekeeping question, do
7 you have a preference as to where we are?

8 THE COURT: It's entirely up to you, as long as we can
9 reach you quickly and you can return to the courtroom quickly,
10 but I don't require the lawyers to stay in the courtroom. If
11 they want to go to some convenient location, I'm fine with that
12 as long as we can reach you quickly.

13 MR. WILLIAMS: We should write down our cell phone
14 numbers for Mr. Ruocco?

15 THE COURT: Yes, that would be very helpful.

16 (Recess taken)

17 THE COURT: We have received a note from the jury,
18 which I marked as Court Exhibit 22, dated today, reads as
19 follows: We would like Stephen Maiden's full testimony on
20 direct to include his background information, signed by the
21 foreperson.

22 So we need to pull together Stephen Maiden's testimony
23 on direct examination.

24 MR. JACKSON: Your Honor, we prepared a redacted
25 version of that. We planned to confer with the government, but

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1 time didn't allow so we could share that with them.

2 I don't know if you already have a redacted version.

3 MS. GRISWOLD: No.

4 MR. JACKSON: So we redacted a version, we redacted
5 colloquy and objections sustained, and we'll pass a copy to the
6 government if they want to take a look at that.

7 THE COURT: Great.

8 MR. JACKSON: Actually we have an electronic copy.
9 Ms. Rosen is going to send the electronic copy now to the
10 government so they can review it as we print -- as we begin to
11 print the direct, just the direct, because it is longer than I
12 thought it was. So she's going to send that to the government
13 now for them to review and then print that, and we can
14 substitute any pages.

15 So if it's all right, I will ask Ms. Rosen to do that
16 now.

17 THE COURT: Okay. You sent it electronically to the
18 government?

19 MR. JACKSON: We're sending it electronically to the
20 government, unless it would be easier for you to print it.

21 MR. NAFTALIS: It's easier for us to print it because
22 we would be looking at our phones. We don't have internet
23 access, so we would be looking at it --

24 MS. GRISWOLD: Or if we could look at it -- unless
25 that's the printing computer. Whatever is most efficient. If

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1 you have redacted version to look at on your computer --

2 MR. JACKSON: We do.

3 MR. WILLIAMS: How long will it take to print?

4 MR. JACKSON: I think the direct is -- it's few
5 hundred pages, so it may be faster --

6 MR. NAFTALIS: Would you like us to print it?

7 MR. JACKSON: It may be faster.

8 MR. NAFTALIS: You forward it to us.

9 MR. JACKSON: We're forwarding it to you now.

10 I just the note the version that's been sent to
11 government, to Mr. Urbanczyk, it has a few things highlighted
12 that Ms. Rosen wasn't sure what the parties' positions would be
13 in terms of colloquy and motions to strike in terms of what was
14 stricken, so as you look at that you can make a determination
15 to whether or not you're in agreement with us. But there are a
16 couple of things highlighted, everything else I think should be
17 non-controversial.

18 MR. WILLIAMS: Your Honor, for sake of efficiency, we
19 think Ms. Griswold and I should go back with the paralegals.
20 Mr. Naftalis will stay here.

21 MR. NAFTALIS: I'll make sure nothing happens.

22 MR. WILLIAMS: And we'll hustle our way back.

23 THE COURT: Does that make sense, Mr. Jackson?

24 MR. JACKSON: It's not who we would choose for ransom,
25 but it will work.

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1 MR. NAFTALIS: I think it was pretty clear from the
2 first day of trial that Maiden and I were not -- I didn't have
3 much to do with Maiden.

4 THE COURT: You left that privilege to Ms. Griswold.

5 MR. NAFTALIS: Yeah.

6 (Pause)

7 MR. NAFTALIS: For some reason, Mr. Jackson's email
8 isn't going out. We'll start to redact over in our office, but
9 to the extent there are issues in dispute, the question is
10 whether the parties are okay if we do a black marker here. So
11 we won't redact anything if it's move to strike, but we wanted
12 to see how people wanted to handle this.

13 THE COURT: What's the problem with the email, is it
14 too large a file?

15 MR. JACKSON: It may be. I think we're having a
16 little bit of problem because as it's being converted over into
17 this, into the email, some of the redactions are not coming
18 across, it's too big, but we're trying to fix it now. But
19 we're happy -- I think we'll be able to fix it very shortly,
20 but we're happy with any other solution.

21 MR. WEITZMAN: Your Honor, I appreciate the practice
22 of not doing readbacks of the entire direct testimony.

23 THE COURT: You guys want to work on the transcript
24 together?

25 MR. WEITZMAN: Yeah.

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1 (Pause)

2 THE COURT: I have received a note from the jury,
3 which I am marking as Court Exhibit 23. Reads as follows: We
4 have not reached a verdict. We will return Tuesday,
5 December 26, 2017 at 9:30 a.m.

6 So I'm going bring the jury out and tell them that
7 we're still working on their request, but we'll have it ready
8 for them first thing tomorrow morning.

9 MR. JACKSON: We'll send some other ones we have been
10 preparing. The parties can continue, I think, to confer over
11 the weekend.

12 THE COURT: All right.

13 (Jury present)

14 THE COURT: I see you all have your coats on, so I
15 will make this quick.

16 First of all, ladies and gentlemen, I wanted you to
17 know we're working on our response. It does take us a little
18 bit of time because we have to redact out all the colloquy I
19 had with the lawyers and there was some sustained objections in
20 there, so that's what we're doing. We will have that portion
21 of the transcript ready for you on Tuesday morning.

22 I do want to tell you that on Tuesday morning your
23 deliberations cannot begin until all twelve of you are there,
24 so please no discussion about the case until all twelve of you
25 are present.

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1 As always, don't discuss the case with anyone. All
2 the rules of conduct remain in place. You can't read, listen
3 to, or look at anything about the case, can't do any
4 investigation on your own, can't talk about the case with
5 anyone else.

6 Please leave all materials here. So your notes, the
7 jury instructions I gave you today, everything stays here. And
8 then finally, and most importantly, merry Christmas, and thank
9 you very much, I hope you have a very pleasant weekend.

10 Thank you.

11 (Jury not present)

12 THE COURT: Anything anyone wants to raise before we
13 break?

14 MR. JACKSON: Just curious, Judge, I know different
15 practices in courtrooms, do you expect us to come and check in
16 at 9:00 a.m.? So you will call us if -- we'll be nearby, you
17 will call us.

18 THE COURT: As I said, as long as you're accessible
19 and can come over quickly, you can be wherever you want to be.

20 MR. JACKSON: I guess for this particular Monday we
21 probably need to just -- because we have some exhibits, I mean
22 we have a document we need to give to the marshal, but I assume
23 the Court doesn't have to bring them in.

24 THE COURT: No, if there's any dispute between the
25 parties about what should be sent back there, I obviously will

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1 need to get involved in that, but if there is agreement between
2 the parties about what should be sent back, please give the
3 transcript to Mr. Ruocco, Mr. Ruocco will give it to the
4 marshal, and that's all that has to happen.

5 MR. JACKSON: Thank you, Judge.

6 THE COURT: Anything else?

7 MR. JACKSON: Have a great holiday, Judge.

8 THE COURT: Thank you very much. Same to all of you.

9 MR. JACKSON: Thank you, Judge.

10 (Adjourned to December 26, 2017 at 9:30 a.m.)
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